THE OMBUDSMAN OF ONTARIO

ANNUAL REPORT
1985-86

DANIEL G. HILL
OMBUDSMAN

The Ombudsman | Ontario

125 QUEEN'S PARK, TORONTO, ONTARIO
M5S 2C7
TELEPHONE (416) 596-3300

June 18, 1986

The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto, Ontario

Dear Mr. Speaker:

It is an honour and a pleasure to present the Thirteenth Annual Report of the Ombudsman for the period April 1, 1985 to March 31, 1986.

This report is submitted pursuant to section 12 of the Ombudsman Act.

Yours sincerely,

Daniel G. Hill

Daniel G. Hill

DANIEL G. HILL

OMBUDSMAN'S MESSAGE

Article 21 of the United Nations Universal Declaration of Human Rights guarantees the fundamental right of the citizen to reasonable access to the services of government.

When I took my oath of Office, I promised the citizens of Ontario that the Office of the Ombudsman would become more visible, more reachable and more relevant to you, the residents of our province.

This Office exists to help people. Our role is to investigate and resolve citizen complaints against the administrative actions of the provincial government and to explain and protect the rights of those citizens in their dealings with the more than 500 provincial ministries, boards, agencies and other administrative units employing approximately 80,000 public servants.

Our mandate is large. Our resources are limited. I know that unless we are known and accessible we cannot help those who need us most. As I enter my third year as Ombudsman, I am more than ever convinced of the necessity of an integrated approach to service, a goal which emphasizes accessibility.

In the past year I have launched several initiatives to bring this goal closer to realization. Our Directorate of Regional Services has been reorganized and expanded to bring the Ombudsman's services closer to the homes of over 9,000,000 residents and, I am pleased to report, with no increase to our budget.

As part of an integrated service approach I have embarked on an experimental program to supplement our three regional and two district offices with the appointment of new part-time field officers in areas that have been historically under served. I expect that three field officers will be in service by the end of this fiscal year.

Another initiative is my commitment to store-front facilities. Recently our Thunder Bay and North Bay Offices moved from highrise to downtown walk-in store-front locations which have already proven to be far more visible and locally convenient.

As Ombudsman, I have a strong commitment to ensure that Aboriginal people in Ontario have the same access to my Office as do other citizens. In the last year alone we have made contact with more than 200 Aboriginal organizations throughout Ontario with very encouraging results.

Public education and community outreach are the most direct methods to make our services more accessible. In this regard we have intensified our efforts. By organizing education events we have expanded our contacts with community organizations to include the community legal clinics and other educational and self-help groups throughout the province.

I am proud of our progress in the last fiscal year and I will continue to work for full accessibility to our services for all the people of Ontario.

During the present fiscal year it is my intention to review our programs in respect to more direct services to the Francophone community.

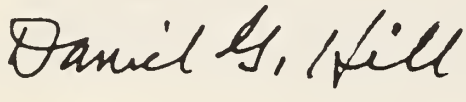
I intend to place added emphasis on systemic investigations and a broader view of complaints. I am pleased that the Standing Committee on the Ombudsman has continued to encourage me to bring systemic problems to its attention and later in this report I will outline three special projects in this regard.

I thank the Standing Committee for its excellent cooperation and support of my efforts. The Committee's thirteenth report is a high-water mark in the relationship between this Office and the Legislative Committee on the Ombudsman. I am in full agreement that the change from a Select to a Standing Committee creates a greater degree of permanence and stability to the entire Ombudsman process and I also commend the Legislature for this action. I am particularly pleased that the Committee has agreed to consider the question of expanded jurisdiction. My staff and I will be at its disposal to assist in its deliberations.

I also wish to express my appreciation to Ontario's civil servants. Without their continued cooperation the Ombudsman's efforts cannot be successful. I commend the commitment and professionalism that is so generally prevalent among our public officials.

I also express my gratitude to my excellent and able staff. The people of Ontario can be proud of the men and women of this Office who work so hard on their behalf.

During the past year I have become more than ever convinced of the utility of the Ombudsman's Office in advancing social justice for all Ontario citizens. I am honoured to serve as Ombudsman of Ontario and I renew my commitment to take positive and constructive action in all my endeavours.



Daniel G. Hill

HIGHLIGHTS

This is the thirteenth occasion for tabling an Annual Report in the Legislative Assembly. The report deals with the activities of the Ombudsman's Office from April 1, 1985 to March 31, 1986.

- This report is divided into two parts. Part I is an overview of the operations of the Ombudsman. Part II deals with recommendations made by the Ombudsman that were denied by various governmental organizations.
- A major improvement is reported in the time it takes to close jurisdictional complaints. (p. 5)
- The Directorate of Regional Services has been expanded to make the Ombudsman more accessible. This initiative includes the placing of Field Officers in Windsor, London and Sault Ste. Marie. (pp. 5 to 6)
- Our public education program has implemented a Reasonable Access Policy for Office of the Ombudsman materials which includes the transcription of our Equal Times newsletter into Braille. (p. 6)
- An Employee Grievance Procedure has been implemented. (p. 7)
- A secondment program with the Ministry of Correctional Services has been initiated. (p. 7)
- The progress of our ongoing governmental liaison committees to resolve issues and reduce confrontation is outlined. (p. 8)
- Three special projects involving systemic problems with the Workers' Compensation Board, services for the developmentally handicapped and rent-geared-to-income housing in Moosonee are introduced. (pp. 9 to 10)
- Concern is expressed about the impact of the implementation of the *Young Offenders Act* on the availability of institutional services for young offenders. (p. 10)
- Concern is also expressed about the disparity in conditions for inmates in correctional facilities with particular emphasis on the Barrie Jail. (p. 10)
- Comments are made on five important but unresolved issues in the Social Benefits and Justice policy fields. (pp. 11 to 12)
- Comments are made on financial compensation for complainants. (p. 13)
- Two urgent special reports were tabled with the Speaker of the Legislative Assembly. (p. 12)
- The Canadian Ombudsman Committee on Child Protection is formed. (p. 13)
- Statistical information presented includes the disposition of all complaints closed by this Office in fiscal year 1985-86. (pp. 29 to 32)
- Budgetary expenditures are presented. (p. 32)
- Four cases are reported where the governmental organization refused to implement the Ombudsman's recommendations. (pp. 33 to 45)

TABLE OF CONTENTS

INTRODUCTION

This annual Report covers the fiscal year from April 1, 1985 to March 31, 1986. The report has been divided into two parts.

Part I provides an overview of our last fiscal year and includes a selection of case summaries which illustrate the varied complaints that come before the Ombudsman.

Part II is devoted entirely to detailed summaries of recommendation denied cases and tables of all recommendations outstanding from past reports.

Fiscal Year 1985-86

In commenting on the past fiscal year, 1985-86, I am pleased to report that our trend toward greater efficiency has not diminished. The number of complaints and information requests closed in the past fiscal year has increased from the previous year to an all-time high of 14,210. This includes 5,235 jurisdictional complaints, 6,266 non-jurisdictional complaints and 2,709 information requests.

The average duration to close the 5,235 jurisdictional complaints was 113.2 days. Last year I reported to the then Select Committee on the Ombudsman that the average duration to close the 5,366 jurisdictional complaints in fiscal year 1984-85 was 229 days. It would not be entirely accurate to say that we have cut the average duration time to close jurisdictional complaints by almost one half, because the average duration number for fiscal year 1984-85 was generated by our old data collection system and may well have been overestimated due to accuracy problems within the system. However, the average duration number for fiscal year 1985-86 was generated by our new computer system and I am assured is very accurate. Still, I am pleased to report that we have achieved a significant improvement in the time it takes to close jurisdictional complaints over last year and I am convinced that this trend will continue.

In August 1985 the Office installed a new computer system to replace our outdated word processing systems. The new system provides many enhancements to the reporting and data collection functions required by the Office, as illustrated above.

Specifically, management reports have been improved to allow for easy identification of problem files, and data collection procedures have been revised to identify bottlenecks in order to pursue corrective action and assist in expediting case processing. In addition, the data collection facilities formerly provided by the University of Toronto have been transferred to our in-house system producing a significant cost reduction.

Our new system has just recently become fully operational and in my next annual report I will be able to give effect to the suggestion given in the Standing Committee's recent thirteenth report that the Ombudsman list a category of current investigations that are being delayed by factors outside of his control.

Regional Services

During the past fiscal year regional services were a special priority for this Office. The Directorate of Regional Services was enhanced with the appointment of a new Director, a Supervisor of Field Services, and four additional staff members.

Part time field officers were hired for Windsor and London to serve as initial complaint handlers and community liaison officers. Another officer will be recruited for Sault Ste. Marie in the very near future.

It is presently beyond the resources of this Office to open additional district offices and I am hopeful that the concept of part time staff members in under-serviced areas will prove most effective in making our services more accessible.

This Program is on a pilot-project basis and will be carefully evaluated to determine future growth and direction.

The new Regional Services Directorate has embarked upon an active community outreach program. Each of the regional, district and field officers is engaged in a careful strategy aimed at making the services of our Office known to a large variety of community based groups, such as those representing the elderly, the handicapped, visible minorities, Native people, labour and students, to mention a few. In this manner a network will be fostered which will extend knowledge and use of our services throughout the province.

During the past year our Native Programs initiative has been incorporated into Regional Services and has been dramatically expanded with the assistance of our Native Programs Officer.

I cannot list the more than 200 Aboriginal organizations throughout Ontario contacted in the last year, but I am pleased to report some of the highlights of our Native outreach activities.

- With the Sault Ste. Marie Indian Friendship Centre, our Office co-hosted the first Aboriginal Conference on the Ombudsman, May 9, 1985. Over 100 Native representatives took part.
- Our Director of Regional Services and two staff members visited isolated reserves in the Moosonee, Attawapiskat, Winisk and Fort Severn region of Northern Ontario.
- I personally visited the Sault Ste. Marie Indian Centre, N'Amerind Centre in London, Can-Am Indian Friendship Centre in Windsor, the Thunder Bay Indian Centre and the Native Canadian Centre in Toronto.

Perhaps our most important initiative last year was the expansion of services to Native incarcerates. In response to the number of Native inmates in provincial correctional facilities and in conjunction with the Ontario Native Council on Justice our Office organized a two-day workshop at the Native Canadian Centre in Toronto. This special project included representatives from the Ministry of Correctional Services, the Ontario Federation of Indian Friendship Centres, five Indian Friendship Centres who sponsor Inmate Liaison Worker Programs, two representatives from Native Sons Groups within the correctional system and our own Institutional Investigations team.

The workshop was very well received by all participants.

I am encouraged by the support this Office receives from Native organizations and I will continue to improve our accessibility for Aboriginal people in this province.

Public Education

I am pleased to report that the Directorate of Communications and Public Education is continuing to make the services of this Office better known to all Ontarians.

The Directorate has been strengthened by the addition of an experienced senior officer and educational initiatives have been greatly expanded.

In keeping with recent federal government guidelines, I have adopted a Reasonable Access Policy for Office of the Ombudsman materials. Individuals who are unable to read or use regular print materials because of physical disability may contact the Communications and Public Education Directorate to request that the materials be transcribed into an accessible medium. Every reasonable step will be taken to ensure that access is provided.

The first step in this policy has been the transcription of our Equal Times newsletter into Braille.

Other initiatives have included a new bilingual pamphlet entitled "How Your Ombudsman Can Help You". Our multilingual fact sheets, now in 8 languages, have been expanded to include Cree. Five mobile information display units are now in circulation throughout the province. A roster of public speakers in the Office has been organized to handle the increasing number of requests for speaking engagements and invitations to attend community functions.

Finally, a stronger emphasis has been placed on working closely with community organizations. For example, an all-day conference on the role and function of the Ombudsman was held for 60 representatives of the province-wide community legal clinic system in cooperation with the executive officers of Community Legal Education Ontario.

In this regard we have also acquired observer status in a number of community groups including the City of Toronto and City of North York's Mayors' Committee on Race Relations.

New Appointments

As part of my overall Office reorganization, I have made the following appointments to my senior operating staff:

Director of Investigations – Gail Morrison
Director of Regional Services – Harvey Savage
Assistant Directors:
– Justice, Licensing & Labour – Paula Boothby
– Workers' Compensation – Martha Keil
Personnel Officer – Joan Harrison

In addition, with the introduction of the new regional field officer program, I have appointed the following persons:

Supervisor, Field Officer Program – Robin Rowe
Field Officer, Windsor – Pamela Young
Field Officer, London – Jackie Yuen

I have made one additional appointment to the Directorate of Communications and Public Education:

Senior Communications and Public Education Officer – Karen Wheeler/McSweeney

Performance Appraisal

In September 1985, the new performance appraisal program became effective. The system is three-tiered. The first tier involves meetings between the manager and each employee, individually, to review their job description so that there is a mutual understanding of the responsibilities, objectives and results expected.

The second tier is a six-month to one-year ongoing review process, where the manager observes the employee's daily activity and discusses any specific problems on the spot so that the employee is aware of any difficulties he/she may be having over the course of the review period.

The third tier consists of a meeting, at the end of the review period, between the manager and employee to discuss the employee's work during the review period, using the objectives set and results expected that were outlined in the first tier, as the basis for the appraisal. New objectives are then reset for the coming review period.

By the end of April 1986, we will have completed our first three-tier phase with all employees.

I am hopeful that this new system gives employees a better understanding of their jobs and what is expected of them.

Grievance Procedure

I have now implemented an Employee Grievance Procedure, effective April 1, 1986.

To assist in the implementation and functioning of the process, an elected Employee Committee works with a comparable Management Committee to discuss any problems which may arise.

The Grievance Procedure commences with informal discussions between the employee and the supervisor about the complaint. It moves through three steps to a final stage, where, if no resolution has been reached, an outside arbitrator is appointed to make a final decision.

I am pleased to report that this is the first Canadian Ombudsman's Office to adopt a formal grievance procedure for its employees.

The procedure is a one-year pilot project so that employees and management will have time to adjust any problem areas in the present process.

I am confident that the Grievance Procedure's implementation will go a long way to improving working relationships within the Office of the Ombudsman.

Staff Training and Development Programs

In October 1985, an Orientation Training Program was completed to assist new staff in adjusting to their jobs more readily. The program entails documentation, an orientation seminar, job introduction, and follow-up.

In December 1985, support staff from our District and Regional Offices each spent a week in Toronto participating in an in-depth training program tailored to their needs. One half day was devoted to assisting them in developing techniques for dealing with difficult complainants.

Because of its success, the program was expanded for the benefit of Investigators and Investigative Researchers. As a result, on February 24 and 25, 1986, two one-day seminars were conducted in house on "Practical Techniques for Dealing with Difficult Complainants".

In addition several education seminars were conducted for staff whereby guest speakers were brought in to speak on various topics. These speakers represented Community Legal Education Ontario, The Ontario Women's Directorate, Chiropractic Care, Post-traumatic Psychological Disabilities, Building Safety and Security, Occupational Stress and Stress Management.

Finally, to develop job related skills a number of staff attended various staff development seminars and courses conducted by such organizations as, the Civil Service Commission, MICA, Network for Learning, Wang and various Community Colleges.

Secondment Program

In an effort to give employees of our Office and of the Ministry of Correctional Services an opportunity to expand their experiences, we have begun a secondment program with the Ministry of Correctional Services.

In June 1986, a staff member from the Ministry will be seconded for a one-year period to the Ombudsman's Office. At the end of the year, the process will be reversed and a member of the Ombudsman's staff will be seconded to the Ministry of Correctional Services.

This is the first time a program of this kind has been attempted by my Office. I am convinced that it will assist our two agencies in learning more about each other.

I am hopeful that, if it succeeds, we can make similar reciprocal arrangements with other Ministries and Boards of the government. The more we know about each other, the better we can function.

Ongoing Governmental Committees

In last year's Annual Report, I outlined a new initiative involving the establishment of a committee of senior officials from the Ministry of Correctional Services and the Ombudsman's Office that would meet on a regular basis to discuss mutual concerns and settle, where possible ongoing cases.

The cooperation and sincere efforts of the Ministry's committee members have resulted in some notable agreements being reached by the committee which include:

- An Amendment to Regulation 649 under the *Ministry of Correctional Services Act* giving inmates the right to earn bank interest on monies held in trust by the Superintendent of an institution.
- A policy change allowing inmates undergoing close confinement, as punishment for an institutional misconduct, to continue to earn remission providing that they apply themselves industriously to the program while serving their punishment.
- A policy to limit the use of special diet as punishment for institutional misconduct.
- The formation of a special committee to study in depth the Ministry's Incentive Allowance Program for inmates.

Because of the encouraging success of this process and with the cooperation of the new Chairman of the Workers' Compensation Board, Dr. Robert Elgie, we have established a similar ongoing committee of Workers' Compensation Board officials and Ombudsman senior staff. I am pleased to report that this Committee has helped to resolve a number of very difficult and long-standing cases.

In a new spirit of cooperation, Dr. Elgie has this year instituted the "Committee to Review Appeal Board Decisions". This three-member Committee, working in tandem with three of my senior staff, considers our 19(3) and 22(3) submissions. I am pleased to report that a cooperative and open-minded exchange of ideas has resulted from the work of this new Committee. We have in some instances avoided protracted paper disputes and resolved matters to the early benefit of the workers involved.

The Committee has had profitable discussions with my staff regarding the length of time the Committee needs to review our submissions. We have every assurance that the Committee will proceed more expeditiously, in the future, while still maintaining its quality of attention to the issues.

In addition, I have had discussions with the Minister of Housing, the Honourable Alvin Curling, and the newly appointed Chairman of the Ontario Housing Corporation, Mr. David Greenspan, that have resulted in the establishment of a liaison group of Ombudsman officials to work with senior Ontario Housing Corporation officials.

As a result of the positive achievements by these committees, I intend to expand my efforts to form similar groups in other Ministries in the coming year.

Investigative Reorganization

In my last Annual Report, I outlined the organization of a new administrative structure. This structure is composed of five Investigative teams, and one Intake and Information team. Each Investigative team handles a particular group of policy fields, and develops special expertise in these areas. Each is headed by an Assistant Director, and has counsel available to it to provide legal advice and assistance. All six areas report to my Director of Investigations, who, under the guidance of my Executive Director, ensures that the teams are working smoothly, and that a consistent approach is taken to investigations in all areas.

I have been very pleased with the results of this reorganization. I believe it has resulted in speedier and more effective case handling, higher staff morale, and generally improved service to the public.

Ombudsman Investigators' Workshop

On March 13th and 14th, 1986 our Office hosted the Canadian Ombudsman Investigators Workshop. Thirteen investigators attended from most provinces having Ombudsman as well as representatives of the Federal Privacy Commissioner's Office and the Office of the Public Complaints Commissioner. This was a productive workshop in which issues of general interest to all Ombudsman investigators were discussed. The conference, at very little cost, succeeded in providing a forum for investigators to exchange information, techniques, and points of view on problems common to all Ombudsman offices.

It is hoped that this will be the start of a regular Workshop program to be hosted by a different Ombudsman each year.

SPECIAL PROJECTS INVOLVING SYSTEMIC PROBLEMS

The Workers' Compensation Board and Psychotraumatic Entitlement

Over the last few years, a number of objections to Workers' Compensation Board decisions have involved the issue of entitlement for psychotraumatic disability. In discussions with investigators dealing with these cases, and in reviewing the files, it became apparent that several difficulties keep recurring. For example, although the Workers' Compensation Board might accept that a worker has a psychological disability, entitlement may be denied on the basis of "personality factors" even though there is no prior history of emotional difficulty and the worker has a steady job record. In other cases, denial of psychotraumatic disability entitlement reflects the broader problem of the Board's preferring the opinions of its own physicians over those of treating physicians, regardless of their qualifications.

It is my view that the Board practices on adjudication of psychotraumatic disability entitlement constitute a systemic problem which will not be affected by the changes in the *Workers' Compensation Act* or by the functioning of the new Workers' Compensation Appeals Tribunal. Accordingly, I have directed one of my investigative staff to begin a special study of all our files containing objections to decisions about psychotraumatic disability entitlement. Consultation will be sought with Board personnel who have a particular interest in the matter of psychotraumatic disability entitlement.

It is my expectation that potential solutions to the systemic problem can be identified, and it is my hope that our findings will lead to improvement in the adjudicative process of claims in which psychotraumatic disability is a factor.

Services for the Developmentally Handicapped in Ontario

Over the past year I have been made increasingly aware of ongoing concerns about the care, treatment and availability of services for the developmentally handicapped. Presentations and/or complaints have been forwarded to my Office by residents of provincially run facilities, relatives of the developmentally handicapped, private organizations and service providers involved in this area.

I became aware that there were recurring themes in the concerns being identified by these diverse parties. Questions about administrative fairness procedures, the legislation governing the developmentally handicapped, funding policies and practices, discharge planning for individuals to be repatriated from provincially run facilities, are but some of the systemic issues brought to my attention.

To ensure that my Office can provide the attention which I believe these representations warrant, I have decided to delegate one of my senior investigative staff as a Special Projects Officer specializing in the area of developmental handicap. The Officer will look into the issue of systemic problems and also provide an expertise in the investigation of specific complaints.

Rent-Geared-To-Income Housing in Moosonee

In response to a proportionately large number of complaints from tenants and applicants in the Moosonee area, I have started a special project to investigate the Timmins Housing Authority's administration of rent-geared-to-income housing in Moosonee. The population of Moosonee is 85% Native people, and their concerns are of particular interest to me.

The investigation will examine a number of issues including: the reasonableness of the Housing Authority's actions in the areas of administration; recommendations to the Ontario Housing Corporation on the need for and provision of additional housing, eviction procedures, provision of appliances, assessment of applicant suitability, and whether applicants are informed of their right to appeal certain Housing Authority decisions.

The investigation has been planned in two major stages. The first, which has been completed, consisted of a site visit to Moosonee and interviews with tenants and other members of the community. The second stage will consist of a review of the Housing Authority's files in Timmins.

The Minister and the Chairman of the Ontario Housing Corporation have expressed their interest in this study and offered their full cooperation to my staff.

Once the results of the investigation are completed and, recommendations are made to me, before proceeding, I intend to discuss the results with both the Minister and the Chairman in hopes of rectifying and jointly resolving any problems uncovered.

Institutional Investigations

As Ombudsman, I have a strong commitment to ensure that those confined in provincial government institutions have the same access to my Office as do other citizens.

Over the past year I have visited seven provincial institutions and certain observations and impressions have been left with me. First and foremost, I am impressed with the professionalism and compassion shown by the staff of these institutions towards those persons in their care. I am cognizant of the very stressful conditions under which staff must work, and the limitations on resources which exist. Nonetheless, I have some concerns based on my personal observations, and they are reflected in the kinds of complaints received by my Office.

I am extremely concerned about the so-called "split" jurisdiction as it applies to young offenders. In Ontario, young offenders, ages 12 to 15, come under the jurisdiction of the Ministry of Community & Social Services, while those ages 16 and 17 are under the jurisdiction of the Ministry of Correctional Services. While both Ministries had to make adjustments, the most significant impact has been on the Ministry of Correctional Services. The Ministry has had to create "separate and apart" facilities for secure detention and custody of young offenders within many of its existing adult institutions. In addition, the number of young offenders over age 16 seems to be on the increase, as compared to the number of young offenders under the age of 16 who are committed to secure detention and custody. Therefore, many Ministry of Correctional Services Young Offenders Units are routinely overcrowded, while the majority of Ministry of Community & Social Services facilities have yet to reach their full capacity.

The impact of the dislocation caused by the implementation of the *Young Offenders Act* is unmistakable. I am becoming increasingly concerned about the apparent disparity in services available to young offenders based on an artificial age division which has no legal basis. As well, I am concerned that programs and services previously available to adult inmates within the Ministry of Correctional Services have, of necessity, been curtailed because the more stringent legal requirements of the *Young Offenders Act* have caused resources to be diverted for that purpose.

While I am aware that the past twenty years has seen a dramatic and continuous improvement in facilities and programs for adult inmates in this province, I remain concerned about the disparity in programs, services and basic living conditions for inmates among various institutions within the provincial correctional system.

I was particularly disturbed during my visit to the Barrie Jail to see inmates still being housed in cells that have been unchanged since the 1840's. Despite attempts by the Ministry to modernize the institution, the physical limitations of the original structure have proven insurmountable. I find it repugnant that in the 1980's in Ontario, we are still housing inmates in cells that are seven feet deep, thirty-two inches wide and seven feet high, have no running water, toilet facilities or interior lighting. While I do not advocate more prison construction, the Government must consider making monies available to replace outdated and inadequate facilities to ensure that all inmates receive a comparable standard of humane treatment while incarcerated.

I intend to address these issues in more detail in subsequent reports.

UNRESOLVED ISSUES

SOCIAL BENEFITS

Health

In response to a complaint from an advocacy organization representing elderly patients in nursing homes, I am completing an extensive investigation of the actions of the Ministry of Health in carrying out its responsibilities to ensure the good health, care and safety of the residents of a particular nursing home. I have issued tentative conclusions and recommendations expressing serious concern with regard to a variety of health care issues raised in this case such as: possible delays in laying charges against the nursing home; failure to revoke the home's licence and invoke the *Health Facility Special Orders Act* to protect the residents; failure to take action to ensure the existence of a restorative nursing care programme and failure to operate an effective inspection procedure.

At the time of publication of this report, representations from the Ministry of Health on my tentative conclusions and recommendations had just been received. I intend to make my final conclusions as soon as possible.

Amendments to the Family Benefits Act

In the Ombudsman's Fourth Annual Report (October, 1977 - March, 1978), he expressed his opinion that the *Family Benefits Act* ought to be amended to enable the Social Assistance Review Board to vary its decisions in any case where it is in agreement with a report and recommendation of the Ombudsman without insisting on receiving an application for reconsideration from a party and without the necessity of holding another hearing.

In its Fifth Report the Select Committee supported this amendment. In its Seventh Report, the Committee expressed its opinion on the adequacy of the Ministry's response which was to accept the recommendation of the proposed amendment.

The issue appears to have been lost at that point (1979) and has not been raised since. I have recently brought this to the Minister's attention and am awaiting his response.

JUSTICE

Re Ombudsman and the Ontario Labour Relations Board

In my last Annual Report I reported that the Ontario Divisional Court had supported the Ombudsman's position in its case against the Ontario Labour Relations Board, ruling that the Ombudsman had the authority to investigate the merits of quasi-judicial decisions. On March 17th, 1986, the Labour Relations Board succeeded in obtaining leave from the Ontario Court of Appeal to appeal this decision.

When the matter is heard by the Court of Appeal, I am hopeful this issue will be resolved once and for all. In the meantime, a number of Labour Relations Board cases are sitting in abeyance awaiting the decision of the Court of Appeal.

This is a very important issue for the Ombudsman, since approximately 25% of our jurisdictional investigations involve decisions of quasi-judicial tribunals, such as: the Workers' Compensation Board, the Ontario Municipal Board, and the Commercial Registration Appeal Tribunal.

Financial Institutions

The results of investigations into two serious complaints, although completed to the point of seeking representations from affected parties, are still unresolved. These are the Argosy and C & M Financial Consultants Ltd.

244 Argosy complainants and 25 C & M complainants approached the Ombudsman after losing their savings through the alleged maladministration of certain agencies of what is now the Ministry of Financial Institutions.

At the end of 1985, on the basis of the investigations conducted, I sent interim reports pursuant to section 19(3) of the *Ombudsman Act* to the Ministry and the Ontario Securities Commission and invited their representations. Despite attempts at negotiation, only the Ontario Securities Commission has responded with representations. These deal with some of the issues raised by the two cases; the remainder are still not addressed.

If the Ministry's response is not forthcoming shortly, it is my intention to issue a final report without it.

Public Trustee

It is with regret that I must comment in this report on the uncooperativeness of the Public Trustee.

The Public Trustee performs many important functions in the overall administration of justice in the Province of Ontario. Among his responsibilities are the administration of a number of intestate estates and the managing of affairs of persons determined to be incompetent under the *Mental Health Act*.

My concern at this time is not with the merits of the complaints made against the Public Trustee, but with the uncooperative attitude towards the Office of the Ombudsman of Ontario.

This lack of cooperation may be premised in part on the differences in the interpretation and application of our respective governing legislation. However, I have attempted on several occasions to establish a more effective method of working out any differences. Unfortunately, I have met with little success. Those members of my investigative staff who must deal with the Public Trustee find it difficult to effectively and efficiently perform their responsibilities.

Unfortunately, because of these problems, over the past year approximately 20 cases have been held in abeyance at one stage or another in our investigations.

After two years of dealing with the Public Trustee in this way I can no longer in good conscience allow it to continue without publicly stating that this problem exists. I fervently believe that with good faith and mutual respect a working relationship can be achieved.

However, as in the past, where problems cannot be resolved through negotiation with a Ministry agency, I may be forced to take the matter to the Courts for a resolution.

WORKERS' COMPENSATION BOARD SYSTEMIC PROBLEMS

Last year in the Annual Report, I detailed three systemic problems, relating to the Workers' Compensation Board; namely, not availing itself of legal advice or current case law, assessments of permanent disability awards and precedence given to opinions of Board medical staff over outside medical specialists or experts.

Credit should be given to Dr. Robert Elgie for his assistance in attempting to resolve these matters. However, the problem of medical weighting on the side of the Board's medical staff continues, although I am hopeful that, in the near future, reports from treating physicians and outside specialists will be given their due weight.

SPECIAL REPORTS

During the past fiscal year I presented two Special Reports to the Speaker of the Legislative Assembly, involving governmental organizations that refused to implement my recommendations. Although Ombudsman Reports are generally presented annually to the Assembly, it is my practice, in matters of special urgency, to issue Special Reports to the Speaker so that the Standing Committee on the Ombudsman can consider them on a priority basis.

The two reports presented dealt with matters needing resolution before September, 1986, the usual time for the Committee to deal with the Ombudsman's Annual Report.

One concerned my recommendation that the Ontario Northland Transportation Commission accept the request of a long-standing employee to buy back pension entitlement for early service with the Commission. As the complainant was to retire soon, his request had to be dealt with expeditiously.

The other report dealt with my recommendation that the Ministry of Health allow a complainant to transfer OHIP billing privileges to a facility for which he has an option to purchase the licence. The complainant's option to purchase expires this June.

Within a week of the tabling of these Special Reports, the Standing Committee was able to consider both and, I am pleased to report, support my recommendations.

In the future I will continue to use the vehicle of Special Reports when necessary to obtain a speedier resolution of complaints and to ensure that a delay in justice does not result in a denial of justice.

FINANCIAL COMPENSATION FOR COMPLAINANTS

On many occasions I have been asked how much financial compensation from governmental organizations is achieved by this Office on behalf of our complainants. Although I do not believe that the amount of monies acquired for complainants should be used as an index to measure the effectiveness of this Office, I do believe there may be some merit in reporting such information.

Since I have not monitored running totals of compensation in each policy area, in this report I can only approximate totals. However, in my subsequent reports I will provide more detailed figures.

During the last fiscal year more than $500,000 (approximate figure) was acquired for our complainants. Of this amount $465,000 came from the Workers' Compensation Board alone, the highest single award being $79,000. Other amounts vary from $5 on an overpayment of a parking ticket to $22,000 for a compassionate allowance to an institutionalized inmate for personal injury suffered in the institution's shop.

THE CANADIAN OMBUDSMAN COMMITTEE ON CHILD PROTECTION

In June, 1985 the Canadian Conference of Legislative Ombudsmen was held in Quebec City hosted by my Quebec colleague, Mr. Yves Labonte, le Protecteur du Citoyen. Ombudsmen and staff from every province (except Prince Edward Island) participated in this excellent and productive gathering.

Two important resolutions were adopted: the first called for the creation of a Federal Ombudsman; the second recognized the increase of recorded incidents of child abuse and neglect. All provincial Ombudsmen agreed to seek solutions which would protect one of society's most vulnerable groups. To give effect to this resolution, a Committee was appointed consisting of Mr. Brian Sawyer, Ombudsman of Alberta, Mr. David Tickell, Ombudsman of Saskatchewan and myself. To date the Committee has drafted a "Declaration of Principles on the Handling of Children's Complaints" which has now been circulated to all Ombudsman Offices in Canada, for comment at the Annual Meeting of Canadian Ombudsmen in June, 1986. In addition a national clearing house for information pertaining to child protection is now located in the Ontario Ombudsman's Office.

CASE SUMMARIES

SOCIAL BENEFITS

One of the Ombudsman's powers is the right to "investigate the investigation" of another governmental agency. In the following case, the Ombudsman was not satisfied with the basis on which a decision had been made.

Summary No. 1

The father of a handicapped child complained to the Ontario Human Rights Commission that the Board of Education in his area indulged in discriminatory practices in its provision of bus service to handicapped students. He alleged that the services provided under the authority of the Board were substandard to those provided to non-handicapped students. He also alleged that driver training, licensing, expertise and attitude as well as vehicle maintenance and safety features were inferior for handicapped students. His complaint to the Commission was dismissed and a reconsideration submission was unsuccessful in having the Commission change its original decision. The Commission's decision was based on the finding that the Board had made reasonable efforts to improve bus safety and bus service to handicapped students and had long-term plans for improving service over the next few years.

The complainant was dissatisfied with the Commission's reasoning that the Board had made reasonable efforts to accommodate the needs of his child. The complainant contended that there was no evidence of any long-term plan to improve the bus service, that concessions made to him did not adequately address the magnitude of the issues raised, and that the Commission's investigation did not extend to an examination of the extent to which the private company contracted by the Board to transport handicapped children had violated minimum safety standards and contractual arrangements. He felt that the Commission had disregarded evidence illustrating the inequality between transportation services for handicapped and non-handicapped students, and was deterred by the Board's calculation which demonstrated that there would be a substantial increase in cost if the buses and drivers for handicapped students were brought up to the standard of the Board's buses.

During our investigation, we examined the extent to which the Commission inquired into discrepancies between the services, the reasons for the Board's choice of service for handicapped students, as well as the Board's assurances of current and future improvements in the transportation service of its handicapped students. This was done with a view to determining the reasonableness of the Commission's decision and the adequacy of the investigation upon which its decision was based.

The Ombudsman tentatively concluded that the decision of the Commission not to request the Minister of Labour to appoint a Board of Inquiry to hear the complaint was unreasonable, based upon an inadequate investigation. In particular, the Ombudsman noted that the complainant had consistently maintained that there was no ongoing plan to improve services and our investigation had revealed no concrete evidence of any plan by the school Board to further improve upon the 1983/84 contractual arrangements, nor were there specific plans to attempt to equalize the service over some projected period. The Ombudsman's tentative recommendation was that the Commission should request the Minister of Labour to appoint a Board of Inquiry.

The complaint was resolved when the Commission agreed that its investigation of the complaint was inadequate and agreed to carry out further investigation in order to arrive at an informed decision when it considers whether it should request the Ministry of Labour to appoint a Board of Inquiry under section 35 of the *Human Rights Code.*

The Ombudsman maintains that the requirements of natural justice must be met before a valid decision seriously affecting a person's future can be made.

Summary No. 2

When this nursing student at a community college was dismissed from the nursing program just seven days before her expected graduation, she appealed the dismissal. At the hearing, she found that the lawyer she had chosen to assist her was not allowed to make representations on her behalf. Afterwards she received a letter advising her that the appeal had been denied, but she was given no reasons for the denial.

The College informed us that Appeal Committee members thought it advisable that they hear appeals directly from the persons involved. It was therefore the policy of the College that each student should make his or her own representations at a hearing. The College also explained that it had been its policy not to provide reasons for decisions of the Committee.

It appeared to the Ombudsman that it was unjust not to allow students whose professional careers might be at stake to have a representative to fully present their cases at hearings. He also thought that students should have the right to request written reasons for decisions of the Committee.

As a result of the Ombudsman's submissions, the College agreed to revise its procedures so that, following a majority decision on a grade appeal, a written summary of the reasons for the decision will be prepared, and this summary will be available to the affected student upon request. The College also agreed to review its procedures to allow representatives to act on behalf of students in appropriate circumstances, for example when a professional career may be at stake.

Indigent persons in the care of provincial psychiatric institutions were treated differently from those in psychiatric wards of public hospitals. The Ombudsman asked, "Why?"

Summary No. 3

When this complainant was a patient in the psychiatric ward of a public hospital, she received a "comfort allowance" under the *Family Benefits Act* of $61 per month. She used this money for minor expenses, such as stationary, stamps, craft supplies, books, toiletries, make-up and cigarettes. But when she was transferred to a provincial psychiatric institution, she discovered that her comfort allowance had been cancelled. She argued that since she incurred the same minor expenses as when she was hospitalized, she still required the comfort allowance.

From our inquiries we established that in accordance with Family Benefits legislation, comfort allowances are not paid to patients in institutions operating under the *Mental Hospitals Act*. Patients in psychiatric hospitals are not considered by the Ministry to be persons in need because these hospitals have established internal mechanisms to provide patients with all necessary care, comfort, and clothing.

But the Ombudsman looked at the matter from a different perspective: it appeared to him that the hospitals had established these programs *because* some patients are persons in need.

Our research indicated that psychiatric hospitals have found it necessary to establish a variety of programs to provide "comforts" to patients, both in cash and in kind. The funds come from various sectors of each hospital's own budget, and from volunteer organizations and fund raising activities. Our research appeared to confirm that indigent patients have needs which are not fulfilled by the provincial psychiatric hospitals.

The Ombudsman wanted to ensure that indigent patients in provincial psychiatric hospitals receive a comfort allowance. He wrote the Ministry of Community and Social Services recommending that the relevant provisions of the *Family Benefits Act* be reconsidered so that indigent patients would receive a comfort allowance.

The Ministry advised the Ombudsman that the matter of comfort allowances had been made the subject of an inter-ministerial review. The Ministry of Health and the Ministry of Community and Social Services had jointly completed a draft report, and further study of the operational and financial implications of the options presented in the draft report was underway.

The Ministry promised to keep our Office advised of its progress and stated that its findings regarding comfort allowances would be given to us as soon as it had decided upon a course of action.

The Ombudsman was satisfied at that time that the problems faced by indigent patients would be resolved following completion of the inter-ministerial review and the implementation of new procedures. He will, however, review the proposed changes to ensure that his concerns are met.

The Ombudsman is a proven method for cutting red tape. A prompt inquiry from the Ombudsman may bring quick results.

Summary No. 4

The complainant is a disabled person suffering from cerebral palsy and receiving a disability pension from COMSOC. Unfortunately, the complainant lost his cheque just before his wedding and, as it was endorsed, contacted the Ministry to advise of the loss and request a replacement cheque. The complainant was advised by the Ministry that the cheque could not be stopped, and since it was endorsed, the money was lost with no hope of recovery or reissue. It was the

complainant's opinion that the Ministry's position was unfair as the cheque was lost through no fault of his own and he had immediately advised the Ministry of the loss.

Informal inquiries with the Ministry clarified the Ministry's policy and a stop-payment was placed on the original cheque. The complainant received a replacement cheque the same day.

The speed with which a Ministry process is implemented may sometimes be crucial. The two following cases illustrate the Ombudsman's assistance in ensuring that prompt implementation occurs.

Summary No. 5

The complainant contacted our Office with a complaint against the Ministry of Skills Development. Apparently, he took courses and did an apprenticeship to obtain a mechanic's licence and, in October 1985, was told that he passed his exam. In December, he was informed that he would not get a licence as he did not have enough course hours. He brought in the missing documentation and was told that it would take another six weeks for his licence to be issued. The complainant contended that this delay was unreasonable; he could not secure employment without a licence. He maintained that the Ministry should have confirmed his course hours in October.

Informal inquiries were made to the Ministry to determine when the licence would be issued and whether its processing could be expedited. The licence documents were processed immediately and the licence was available that afternoon.

Summary No. 6

The complainant's son was a student attending a post-secondary school out of the province. He was awaiting financial assistance from the Ontario Student Assistance Program at the Ministry of Colleges and Universities. The complainant informed our Office that her son had submitted his application in September. It was now the beginning of January and his mother maintained that the delay in issuing his money was causing financial hardship. She had been informed by someone at the Ministry that his award would be issued in several weeks.

Informal inquiries were made to the Ministry of Colleges and Universities to determine what was causing the delay and when the student would receive his award.

Ministry officials searched for the student's application and learned that the delay was due to a clerical error on the Ministry's part. The student's application was consequently given priority; he received his award shortly thereafter.

When any decision affects a citizen's well-being, the Ombudsman is of the opinion that adequate reasons for the decision must be provided.

Summary No. 7

The complainant was unemployed and receiving Welfare assistance while pursuing a job search. His Welfare was subsequently cancelled because his job search reports were not considered adequate. He appealed the decision to the Social Assistance Review Board and applied for interim assistance. The Review Board granted that he receive one month's interim assistance.

During our investigation it came to our attention that the complainant was not provided with an adequate explanation as to why only one month of interim assistance was granted. The Chairperson of the Review Board was notified of the Ombudsman's tentative recommendation that an explanation of the Review Board's actions ought to have been provided to the appellant. The Chairperson agreed with the Ombudsman's position advising that, in cases of interim assistance, the Review Board would undertake to provide the appellant with an explanation and/or the reasons for the decision to grant or refuse interim assistance.

Sometimes a complainant may not be aware of what information has been considered in a decision-making process. The Ombudsman may assist citizens by clarifying the basis upon which a decision was made.

Summary No. 8

The complainant submitted medical evidence to the Ministry of Community and Social Services in support of her application for Family Benefits as a permanently unemployable and disabled person; however, she was denied assistance by the Director of Income Maintenance.

The complainant unsuccessfully appealed the Director's decision to the Social Assistance Review Board. In the course of reviewing these decisions, we noted that although the complainant had seen a number of specialists about her medical condition, their reports had not been submitted to the Ministry or the Review Board for consideration. The complainant was advised of this and was satisfied that the information clarified her concerns.

Special circumstances may occasionally justify waiving the usual rules.

Summary No. 9

The complainant wrote to this Office from a temporary address in Switzerland with concerns regarding a decision of OHIP's special committee to terminate coverage due to absence from Ontario. According to OHIP, the complainant failed to meet residency requirements for continued eligibility and his OHIP agreement was cancelled effective October 1, 1985. It was the complainant's opinion that his absence from Ontario was a result of being required to testify at hearings regarding Nazi war crimes and that OHIP's decision failed to consider continued eligibility on compassionate grounds.

Following informal inquiries by this Office on his behalf, OHIP agreed to waive the residency requirements in recognition of his special circumstances. Consequently our complainant's policy was reinstated to cover the period of October 1, 1985 to January 1986, even though he was out of the country for an indefinite period of time.

LAND USE, RESOURCES AND REVENUE

A Cree-speaking couple were evicted by the Housing Authority after they signed an agreement written in English which they could not understand. The Ombudsman's investigation resulted in obtaining not only suitable housing for the couple, but also an agreement that the Housing Authority would change its procedures.

Summary No. 10

This couple felt that the local Housing Authority had unfairly evicted them from their rent-geared-to-income apartment in a northern town.

The investigation indicated that they had been warned that disturbances in their apartment had caused other tenants to complain and if this did not cease, their tenancy would be terminated. Subsequently, the husband signed an "Agreement to Terminate a Tenancy". About two weeks later, an official of the Housing Authority informed the complainant that the apartment had been rented to someone else and inquired when he was moving. The complainants subsequently moved, with the husband going to live in an apparently uninsulated building with no electricity, running water, central heating or plumbing. His wife was not well enough to live in such accommodation and went to the hospital.

Both the husband and wife speak and read only Cree. The husband indicated that he had not understood the meaning of the agreement which he signed, but assumed that if the Housing Authority told him to move, he had no choice but to do so.

In June 1985, the Ombudsman wrote to the Chairman of the Housing Authority setting out his tentative support of this complaint. The Ombudsman felt that the Housing Authority had acted oppressively in presenting to the complainant an agreement to terminate a tenancy in English which he could not read and leading him to believe that he had no recourse but to sign it and vacate the apartment. The Ombudsman recommended that: the Housing Authority alter its practice so that tenants are evicted in accordance with the *Landlord and Tenant Act* so as to have their right to dispute an eviction in court, that the Housing Authority cease using the form "Agreement to Terminate a Tenancy" unless approached by a tenant with an explicit desire to so terminate a tenancy, and that the complainants be housed according to their need. In response, the Housing Authority stated that the complainant had well understood the form and the couple could not be reassessed for subsidized housing because they had forfeited their eligibility by refusing to allow other tenants their basic right to quiet enjoyment of the premises.

The Ombudsman decided at that point to conduct further investigation by having a member of his staff who speaks Cree interview the complainant once again about the signing of the agreement. This additional investigation confirmed that the complainant felt that he had no choice but to sign the paper and move.

The investigation indicated that the Housing Authority had presented to the complainant a document written in a language which it knew he did not understand, failed to offer him a choice as to whether to sign it, and did not explain the consequences of signing. The Ombudsman felt that the complainant was thereby denied the right to dispute what in essence was an eviction, but an eviction carried out without following the procedures set out in the *Landlord and Tenant Act.*

In December 1985, the Ombudsman sent to the Housing Authority and to the Minister of Housing his final report recommending that the complainants be rehoused, that the Housing Authority issue notices of termination in accordance with the law when it wishes to evict tenants and that it cease the use of the "Agreement to Terminate a Tenancy" except where it has been fully explained to the tenant that he or she is under no obligation to sign.

As a result of the report, the Ombudsman met with the Chairman of the Housing Authority and the Assistant Housing Manager who indicated that they were prepared to house the complainant in a family unit along with his grandson and his family. In the circumstances, the Ombudsman considered the complaint to have been resolved. Also, as a result of this complaint, the Housing Authority is now following the *Landlord and Tenant Act* where it wishes to evict tenants so that they are not deprived of their legal rights to dispute the eviction.

Our complainant felt that the Minister of the Environment had circumvented the provisions of the Environmental Assessment Act through an Order-in-Council. While the Ombudsman did not obtain the remedy the complainant sought, he recommended that in future assessments should be carried out to ensure public confidence.

Summary No. 11

The complainant resided near the site of a proposed subway station. She was concerned about the environmental impact of the station and the associated development it would attract to the area.

Construction of a new subway station is subject to the *Environmental Assessment Act*, an Act established to prevent environmental damage and to permit public participation in the environmental decision making process. In this case, the proponent of the project requested the Minister of the Environment to recommend to Cabinet that the project be granted an Order-in-Council exempting the project from application of the Act.

Although the Minister had referred the proponent's request to the Environmental Assessment Advisory Board, the Minister did not accept the advice of the Board to deny the request. The Minister instead recommended to Cabinet that it grant the exemption request. After Cabinet approved the Order-in-Council, the complainant requested the Minister to recommend revocation of the Order, but the Minister denied her request.

The complainant contended that the Minister's decisions were unreasonable. She felt the environmental impact of the station and the associated development ought to be considered through the environmental assessment process.

It was the Minister's position that the proponent of the project could suffer undue expense and delay in obtaining approval under the *Environmental Assessment Act* for an undertaking which he considered would have minor direct adverse environmental impacts. Having weighed this "injury" against the betterment of the people of Ontario by the protection, conservation and wise management of the environment which would result from the undertaking, it was his opinion that it was in the public interest to order that the undertaking be exempted. The Minister submitted the following specific reasons for his decision: the construction of the station would have minimum adverse impact on the environment; completion of the station would provide a needed transportation facility; provision of the station had been facilitated by the earlier construction of truck grades to accommodate the station; the proponent of the project and the City where the station was to be located had provided the public with information and had held meetings soliciting public input regarding the station; and the proponent had submitted a report to show how the environment was likely to be impacted and setting out mitigating measures.

The Ombudsman concluded that the Minister's decisions were unreasonable. He felt the residents in the area would be significantly affected by the development which would follow the construction of the station. He concluded that the indirect effects of the station, i.e. the development as contemplated by the defenders of the "environment" in the area, should have been addressed through the Environmental Assessment process. The Ombudsman concluded that the complainant and other residents of the area had not been afforded the environmental assessment of the station and the proposed development or the input into the environment decision-making process which they should have been given under the Act. Since all necessary approvals were in place to allow the proponent to proceed with the construction of the station and the associated development was underway, the Ombudsman felt that it would be inappropriate for the Minister to recommend revocation of the exemption order. He nevertheless expressed his hope that in the future, given similar circumstances as set out in this complaint, any Minister of the Environment would not overlook the impact of the *Environmental Assessment Act* in addressing the concerns of the public.

In some circumstances, taxing laws may result in unfair double taxation. In this case, the Ombudsman was able to rectify the inequity.

Summary No. 12

In August of 1982, while in Ontario for a vacation, the claimant purchased a new vehicle, paying $477.05 in retail sales tax. She then returned to her home in British Columbia, leaving the vehicle stored in Ontario. Three months later, it was driven to British Columbia, where that province levied $360 in retail sales tax on it. Some nine months later, the claimant returned to Ontario where she has resided since and used the vehicle.

While the law in Ontario required that retail sales tax be paid on the vehicle at the time of its purchase, it also provided that tax might be refunded by the Minister of Revenue if the item was removed from Ontario within 30 days of its sale for the purpose of being used permanently outside Ontario. In this case, however, the vehicle remained in Ontario for three months after its purchase. The Minister of Revenue may exempt a purchaser from the payment of tax if, owing to special circumstances, it is inequitable that the whole amount of tax be paid. The Ombudsman noted that the vehicle was not used in Ontario except to drive it out of the province. Also, the claimant did not intend to use it in Ontario at the time of purchase since she was not living here then and left the province very soon after purchasing it. The Ombudsman felt that the complainant might have been unjustly taxed twice on the vehicle and the Minister would therefore have the power to exempt her from the tax paid to Ontario.

In February of 1985, the Ombudsman wrote to the Deputy Minister of Revenue tentatively recommending a refund of the tax. The Ministry was not prepared at that time to grant a refund, but agreed to ask its counterpart in B.C. if it would refund the tax paid there. After that request was refused, the Ombudsman and Ministry staff met to discuss the case. In November of 1985, the claimant received a cheque from the Ministry of Revenue refunding to her $477.05 in retail sales tax.

A long-standing concern of one of Ontario's native citizens was resolved through the Ombudsman's assistance.

Summary No. 13

In 1945 this Native Canadian complainant moved his family from the Reserve to his job at a commercial fishery in northern Ontario. When he bought the business with a Federal government loan in 1952, he assumed he had also purchased the Crown land on which the log cottage and fishery buildings stood. He raised thirteen children there and regarded it as his home.

When he discovered in 1969 that he did not hold title to the land, he applied to the Ministry of Natural Resources to purchase a two-acre parcel. However, he did not follow through on the Ministry's offer to sell at appraised market value, possibly because his eldest son was not then available to assist his father. In 1971, the complainant and his family moved back to the Reserve as he could no longer earn a living due to mercury contamination of the lake.

When the complainant again approached the Ministry of Natural Resources in 1973 to purchase the cottage and two acres of land for recreational use, he was told that Ministerial policy dictated that no further Crown land would

be available for sale. However, the Ministry could offer him either a ten-year lease or a land use permit under its remote cottage policy. This was not acceptable to the complainant and in 1975 he and his eldest son attempted to establish that he had title to the land by applying for Quit Claim Letters Patent. The application was denied.

In 1982, the complainant requested the assistance of the Ombudsman. We notified the Ministry of the Ombudsman's intention to investigate the complaint that the Ministry had acted unreasonably when it denied his Quit Claim application. We also requested that the Ministry postpone its April 30, 1982 deadline, by which time the complainant had to make arrangements for a Crown lease or land use permit, failing which the fishery buildings and log cottage would be dismantled. Members of the Ombudsman's legal staff researched the complainant's previous Quit Claim application and the Ombudsman's representatives met with both the complainant and his son, and with Ministry officials. The Ministry agreed to postpone the deadline.

Our investigation revealed that various supporting documentation which had been supplied with the application had not reached the Ministry and we were also able to help the complainant obtain other affidavits from elderly people who had lived in the area many years ago. The Ministry agreed to review the complainant's new application for Quit Claim Letters Patent in the context of the recently submitted supporting documentation.

The application was again denied, as the Ministry had discovered a 1951 application to purchase Crown lands made by the complainant's former employer, which indicated the complainant had not had title for sixty years. The Ministry's position was that the application had been denied because adverse possession could only be proved for .77 acres for the period 1951 to 1983. The Ministry offered to sell 1.47 acres of land at an $8,000 appraised market value. The complainant contended that, in view of his long occupancy of the land and the long history of his occupation of the cottage, a fair price would be based upon the 1969 market value, the year in which he first applied to the Ministry to purchase.

As a result of our Office's involvement, the Ministry requested the complainant make a submission indicating what he thought would be a fair purchase price. Eventually, the Ministry accepted the complainant's offer of $2,500 for 1.47 acres.

JUSTICE, LICENSING AND LABOUR

The Ombudsman may be able to provide further information to a governmental organization to assist in the resolution of a complaint.

Summary No. 14

The investigation of this case focused on the efforts of the Employment Standards Branch to recover $182 in wages which had not been paid to the complainant by his former employer. The Employment Standards Branch had looked into the matter and had ordered the employer to pay. No money was recovered because the employer's restaurant had become insolvent and the Branch advised the complainant that it could do nothing further to recover his money.

During the investigation, it was discovered the restaurant had not in fact failed until one year after the Branch ordered the employer to pay the wages. In addition, at the time the order was made, the Branch could have made a third party demand on the personal assets of the owner of the business because it was a sole proprietorship. The Branch had been under the impression that the business was a corporation rather than a sole proprietorship and that assets therefore could not be seized.

The Ombudsman wrote informally to the Deputy Minister of Labour noting that some five years had passed since the complainant had left this job and that the Branch had been acting under a misapprehension as to the nature of the business. He suggested that the $182 in wages ought to be paid and, about one month later, the Deputy Minister of Labour indicated his agreement with the settlement. The complainant duly received his wages.

Sometimes the Ombudsman's investigation of an individual complaint can prompt a review of all complaints received against a particular governmental organization.

Summary No. 15

At the time this complainant entered a psychiatric hospital, he voluntarily appointed the Public Trustee as committee of his estate. Five months later, at the complainant's request, the committeeship was terminated.

As part of his management of the complainant's estate, the Public Trustee had notified various organizations, including the Post Office, that until further notice the complainant's correspondence should be redirected to the Office of the Public Trustee. But when the committeeship was terminated, the Public Trustee did not notify the Post Office until five months later that the complainant's mail should not be redirected to his office. Because the complainant's home had been sold, this meant that all mail addressed to his former address continued to be forwarded to the Office of the Public Trustee.

The mail redirected to the Public Trustee was opened in the mail room. Cheques were cashed and deposited in the Public Trustee's account. In one case the complainant's money was not forwarded to the complainant until three months later. In another case the Public Trustee accepted and opened a registered letter to the complainant offering him employment. The letter was not forwarded to the complainant until long after the last day he could have accepted the position. It was fortunate in this latter instance that the complainant had not expected the job offer, because the delay might have had serious ramifications if his livelihood had been dependent on the offer.

When the complainant contacted the Post Office four months after the end of the committeeship to inquire why mail addressed to his former residence was not being forwarded to him, he discovered that the court order directing that his mail go to the Public Trustee was still in effect. After some further delay, the Public Trustee notified the Post Office that he had ceased to act on behalf of the complainant.

The Ombudsman's investigation centred on the handling by the Public Trustee of mail sent to patients for whom he is no longer responsible. He recommended to the Public Trustee that, at the end of every trusteeship, he notify the Post Office and other sources of correspondence of its termination as soon as possible. He also recommended that the Public Trustee implement procedures whereby any mail received in his office after the termination of a committeeship be directed on the same day to the Estates Officer in charge, and that he or she be responsible for redirecting it by the next working day.

The Ombudsman recognized that the complainant had suffered anxiety and humiliation when he was told by bankers, pension fund holders, employers and others that they could not conduct business with him without the authority of the Public Trustee. With this in mind, he also recommended that the Public Trustee reimburse the complainant 50% of the administration fees charged.

The Public Trustee did not agree to implement the Ombudsman's recommendations. He was of the view that the first recommendation was unnecessary because in all cases the Post Office and other sources are already notified as soon as possible when a committeeship is terminated. He also indicated that, given the volume of work handled by his staff, it would be impractical to ensure that mail addressed to a former patient and received at his office be forwarded by the next working day. Finally, he refused to reduce the administrative charges on the complainant's estate, stating that based on the level of services performed, any allowance would not be justified.

Following the Public Trustee's final response, discussions were held and correspondence exchanged in an attempt to resolve the matter, to no avail. Upon careful consideration, it was the Ombudsman's view that this particular matter should not be pursued further. However, he has instructed his staff to review all of the complaints against the Public Trustee presently under investigation, with a view to assembling a special report presenting any ongoing concerns our investigations have identified with respect to the Public Trustee's process and procedures. That report would include the serious concerns raised by this investigation.

Even if a problem is not strictly within the Ombudsman's jurisdiction, our Office may be able to help.

Summary No. 16

This 66-year-old teacher had contributed to the Teachers' Superannuation Fund for 19 years. Although he continued to teach past his retirement age, he was anxious to retire. But before retiring he wanted to substantially increase his projected retirement income by taking advantage of recent amendments to the *Teachers' Superannuation Act* that would have allowed him to buy additional pension credit for the seven years he had spent before becoming a teacher in a trade related to his teaching.

The problem the complainant faced was that he was already receiving $33 a month pension from a plan operated by his union during the years he was in private industry. The Teachers' Superannuation Commission agreed that he was eligible to buy the credit, but told him that he could not do so while he was still receiving this pension. His attempts to divest himself of this small pension had proved unsuccessful; both his former employer and the assurance company handling the pension advised him that they were legally unable to terminate his pension benefit.

Although our Office could not directly help the complainant as his complaint was outside the Ombudsman's jurisdiction, we wrote him suggesting possible ways to handle the problem. We suggested he write the assurance company and the Pension Commission of Ontario outlining these suggestions.

After considering these solutions in light of the applicable legislation, the assurance company, the Pension Commission of Ontario and Revenue Canada agreed that by using the suggested solutions the problem could legally be resolved. The complainant was allowed to pay back the pension he had received to that date, and this money was then rolled over to the Teachers' Superannuation Fund. In this way the complainant became eligible to take advantage of the trade credit option and substantially increase his retirement benefits.

INSTITUTIONAL INVESTIGATIONS

The following case illustrates the importance of institutional staff acting as positive role models for those in their care.

Summary No. 17

An inmate at a correctional institution complained to our Office that he had heard a correctional officer make a racial remark about him to another correctional officer.

The incident occurred as the correctional officer was escorting the inmate and four other inmates from the dining room to their unit. As they passed a correctional officer seated on a bench supervising inmates in a gymnasium, the inmate heard the escorting officer make a racial remark about him to the other officer. He immediately turned and questioned the escorting officer, but he was told to keep moving. The inmate complained to officials at the institution, and then to our Office.

Although the correctional officer denied that he had made the racial remark, the other correctional officer to whom the remark had been addressed supported the inmate's allegation. Another inmate, walking beside the complainant at the time of the incident, also stated that he had heard the remark.

The Ombudsman recommended to the Ministry that the correctional officer be disciplined, because his derogatory racial remark had been discourteous and unprofessional. He reminded the Ministry that its Manual of Standards and Procedures emphasizes positive communication between staff and inmates to avoid conflict. He also recommended that the correctional officer be enrolled in the Ministry's Human Rights Training program.

Following our investigation, the Ministry conducted its own investigation of the incident. After a disciplinary meeting, the correctional officer was disciplined. As well, all correctional staff of the institution will, in due course, receive training as part of the Ministry's ongoing Human Rights Training program.

The Ombudsman also recommended that the Ministry revise its Manual of Standards and Procedures to include its "Policy Statement on Human Rights and Race Relations". This policy statement had been issued in 1983, and an announcement implementing the policy had been circulated throughout the Ministry. All managers received a training package providing guidelines for training and educational programs and suggesting procedures for dealing effectively and responsively with human rights issues.

The Ministry agreed to implement the Ombudsman's recommendation and the Manual was revised in August 1985 to include the policy statement. The revised manual also obliges managers to ensure that all reported violations are investigated thoroughly, objectively and without delay. If breaches are found, corrective action is to be taken quickly, fairly, and firmly.

The Ombudsman recognized that the Ministry is committed to creating a climate of understanding wherein every individual is treated with courtesy, respect, and without prejudice or discrimination. He agreed with the Ministry that violations are isolated and do not involve the vast majority of Ministry staff.

The Ombudsman can sometimes act as a catalyst to facilitate communication and cooperation between government organizations, leading to the resolution of a complaint. Involvement in the following case resulted in an agreement being reached between two provincial Corrections Ministries which gave effect to judicial intent in one inmate's case.

Summary No. 18

This inmate in an Ontario correctional institution had earlier escaped custody in British Columbia, and several months of his sentence there remained to be served. The inmate was convinced that the Ontario judge, when sentencing him to twenty-two months in an Ontario institution, had made it clear that the sentence would be served concurrently with the remainder of the inmate's British Columbia sentence. The inmate could not prove this because, after the sentence had been handed down, neither his lawyer nor the Crown had contacted British Columbia correctional authorities to ensure proper arrangements were made to carry out the judge's wishes.

Understandably, the inmate did not want to be sent to a British Columbia institution when his Ontario sentence was completed, particularly since this would result in his serving more time in custody than he believed the Ontario judge intended. Before he contacted our Office, he had spent many months trying to resolve the matter on his own.

The judge confirmed to our Office that he had intended the inmate's Ontario sentence to be served concurrently with the remainder of the British Columbia sentence. But we discovered that satisfying the judge's intention would not be a simple matter: Ontario does not have a formal agreement with British Columbia for an exchange of services, and so there was no mechanism available to permit British Columbia sentences to be served in Ontario. We were also aware that British Columbia authorities had earlier taken the position that the inmate's sentence served in Ontario would not be recognized in British Columbia.

When we advised the Ministry of Correctional Services of the judge's intention, the Ministry agreed to write its British Columbia counterpart and suggest that the two provinces enter into a special exchange of prisoners agreement.

The British Columbia Commissioner of Corrections agreed to this special exchange and the remainder of the inmate's British Columbia sentence was transferred to Ontario to be served concurrently with his Ontario sentence.

The doctrine of administrative fairness is central to the work of the Ombudsman. In this case, our investigation resulted in policy changes guaranteeing representation and the right to know the case against them for Ministry staff who are subject to internal investigation and disciplinary proceedings.

Summary No. 19

As a result of an internal Ministry investigation into two incidents wherein inmates alleged excessive use of force, several correctional staff were dismissed from employment following disciplinary proceedings. The employees complained to the Ombudsman about unjust dismissal and about unreasonable actions of Ministry officials involved in the investigation of the incidents and the subsequent disciplinary proceedings.

Grievances related to the dismissals of three bargaining unit and two non-bargaining unit employees were heard by the Crown Employees Grievance Settlement Board and the Public Service Grievance Board respectively, and in both cases the decision to dismiss was upheld by the Boards. Our investigation of the decision of the Crown Employees Grievance Settlement Board was terminated when the bargaining unit employees sought judicial review of the Board's decision. The investigation of the decision of the Public Service Grievance Board resulted in a finding by the Ombudsman that the Board had not acted unreasonably in upholding the Ministry's decision to dismiss the two employees.

With respect to the employees' complaints against officials of the Ministry of Correctional Services for the manner in which the investigation and subsequent disciplinary proceedings were carried out, the Ombudsman's investigation resulted in a report which substantially supported the employees' complaints and in which the Ombudsman recommended significant policy changes to ensure procedural fairness and representation for staff subject to investigation and disciplinary proceedings.

Commencing with issuance of the Ombudsman's tentative conclusions and recommendations pursuant to section 19(3) of the *Ombudsman's Act*, and continuing after the Ombudsman's report of his findings to the Minister and the Premier, this case was the subject of detailed discussions between senior officials of the Ministry and members of the Ombudsman's senior staff. The Ministry also entered into consultations with the Ontario Public Service Employees Union. As a result of these discussions, the Ministry of Correctional Services agreed to the following:

—That inspectors be instructed on the need to be impartial during the course of their investigations.

—That employees who are interviewed pursuant to section 22 of the *Ministry of Correctional Services Act* be permitted to refresh their memories from notes when such notes are reasonably available and a staff member so requests.

—That in certain situations staff be permitted an agent or lawyer to be present during an interview conducted under section 22.

—That for disciplinary meetings:

1. the employee should be given notice of the allegations against him or her prior to the meeting;
2. the employee should be provided with the substance of the evidence against him or her; and
3. the employee should have an opportunity to be represented at the meeting by a person of his or her choice.

Many concerns of provincial government employees fall outside of the collective bargaining process or other statutory remedies, usually because of the individual's employment status. In this case a former employee was assisted in recovering wages owed to him at the time of his voluntary resignation from the Ministry.

Summary No. 20

When this complainant returned to work at a correctional institution after being on sick leave for almost three weeks, he immediately resigned from the position he had held for three and a half years. The Superintendent suspected that the complainant had not been sick, but rather had been attending a training session to prepare him for a new position. The Superintendent refused to pay the complainant for the days he had been absent.

Although the complainant had a medical certificate supporting the legitimacy of his absence from work, the Superintendent wanted him to swear before a Justice of the Peace that he had been ill and that he had not commenced work with the company prior to his resignation from the Ministry.

Our Office contacted the complainant's doctor, who advised that the complainant had a chronic condition and was subject to fainting spells. The doctor was concerned that the complainant might injure himself while working because of the presence of potentially dangerous equipment and substances in his work areas in the institution. The doctor verified that he had advised the complainant to remain home during the disputed time as he considered the complainant to be unfit for duty.

In our view, the complainant had a medical certificate substantiating that he had been ill, and we therefore did not consider it appropriate to require him to take an oath. As a result of our intervention with more senior Ministry officials on the complainant's behalf, the complainant was paid the wages due him for the weeks he had been ill.

WORKERS' COMPENSATION BOARD

Misinformation in the Board's file may sometimes prevent compensation being awarded. In this case, the Ombudsman assisted by obtaining correct information so that retroactive benefits could be paid.

Summary No. 21

In 1962 and 1967 this worker sustained back injuries for which he was granted benefits. In July 1979, the worker experienced further back pain and requested either temporary partial benefits or a pension award. The Board denied the worker's request, basing its decision, in part, on medical reports which indicated that in 1959 the worker had been hospitalized for a non-work-related back condition. Furthermore, the information pertaining to the 1959 hospitalization suggested that the worker's symptoms were due to a herniated disc problem which accounted for his 1979 back pain.

During the course of our preliminary investigation, the worker maintained that he was not hospitalized in 1959 for any back problem. Our Office obtained, from three hospitals, information which was submitted to the Board. The information confirmed the worker's statements that he did not have a herniated disc problem in 1959. On the contrary, the information revealed a diagnosis of a herniated disc following the worker's 1967 work injury.

On May 3, 1985, based on the information submitted by our Office, the Board revoked its previous decision and granted the worker retroactive benefits.

The following case is another instance where entitlement was denied as "arising out of and during the course of employment" because no single incident could be identified. The claim was ultimately allowed as an aggravation of a pre-existing condition.

Summary No. 22

In May of 1982, after 21 years of employment as an upholsterer, this worker had to lay off due to disabling pain in his right and left index fingers. In fact, he had first noticed the problem in 1978, and sought medical attention on a regular basis from that time.

The worker's family physician and his treating specialists all deemed the problem work-related.

The claim was initially allowed on an aggravation basis by the Workers' Compensation Board and paid for the period of entitlement. However, a member of the Board's staff wrote in a memo to file that arthritis was not a disability recognized under the *Workers' Compensation Act*. It was on this basis that the disability was ultimately disallowed and an overpayment established, although even the Board's own doctors agreed that the condition was related to the work as an upholsterer and should be allowed on an aggravation basis.

During the course of the investigation, the Ombudsman wrote the Board to tentatively recommend that the claim should be allowed on an aggravation basis. The Board responded that the worker's treating physicians were unable to specify a single trauma to account for the disability and that therefore there was no accident as defined by the *Workers' Compensation Act*. Further, the Board noted in its response that the worker was suffering from a general arthritic condition and that therefore the problem in his index fingers was not causally related to his employment. Finally, the Board suggested that if the worker's symptoms had an occupational origin, they would have manifested themselves earlier.

In his final report, the Ombudsman pointed out to the Board that his reading of the *Workers' Compensation Act* clearly established entitlement for conditions that arise from the cumulative effect of one's occupation and need not be related to a specific trauma as such. He also pointed out that the worker did seem to be suffering from a general arthritic condition, but that he could not see the relevance of this issue. The worker was claiming entitlement on the basis that his work aggravated the arthritic condition in his fingers. Again, there was no need to demonstrate that the work produced the disease, only that the work aggravated the disease. Finally, the Ombudsman pointed out that he was struck by the preponderance of medical evidence both from Workers' Compensation Board medical personnel and from the worker's attending physicians that the condition had been aggravated by his work as an upholsterer.

Following the issuance of the final report, the Board accepted the Ombudsman's recommendation, cancelling the overpayment and enabling the worker to claim further entitlement should it be necessary.

In this case, chiropractic treatment was originally denied by the Board because it was considered to be merely supportive. In our opinion the treatment was enabling the worker to continue employment without lost time, and no other treatment had proven effective. The claim was allowed.

Summary No. 23

This worker sustained a disc herniation in October 1977 when he fell down some stairs in the course of his employment as an oil burner serviceman. He subsequently underwent a laminectomy and discotomy. In October 1979, he was awarded a 25% permanent disability pension. With the assistance of the Vocational Rehabilitation Division of the Workers' Compensation Board, he underwent a retraining program as a life insurance salesman and later, through his own effort, arranged for more suitable employment as a glass estimator.

Thanks mainly to regular chiropractic support which the Board authorized for approximately two years, it was the worker's experience that he was able to continue working without losing any time due to his compensable condition. In November 1982, however, entitlement for continuing chiropractic care was denied on the basis of a medical report which recommended exercises and membership in a health club rather than treatment by a chiropractor. A later report from the same doctor also indicated that no amount of chiropractic treatment was going to alleviate the worker's symptoms in a permanent way. In its decision of February 6, 1984, the Appeal Board concluded that the continuing chiropractic care was merely supportive and not therapeutic, and consequently denied the worker's request for reimbursement of costs for chiropractic treatment beyond November 1982.

After a review of the documentation submitted by the Board and the worker, we found that treatment by medication alone was insufficient to prevent the worker from losing time from work, that attempted alternative forms of care recommended by the treating specialist were without any positive results, and that the evidence on file indicated that chiropractic treatments had enabled the worker to maintain continuous employment. It was the Ombudsman's opinion, therefore, that the Appeal Board decision respecting this case was unreasonable. The Ombudsman therefore made the recommendation that the worker be granted entitlement for continuing chiropractic care.

Upon reconsidering this case, the Board revoked the previous Appeal Board decision and confirmed the acceptance of the Ombudsman's recommendation. Of paramount importance, in the Board's opinion, was the evidence on file which indicated that chiropractic treatments had enabled the worker to maintain continuous employment since 1981 without losing any time due to his compensable condition.

In this case, a commutation of the worker's pension was denied on the rather vague grounds that his request did not meet the "guiding principles" for such.

Financial gains of more than $60,000 were at stake, increasing the worker's annual savings by approximately $4,000. The commutation to reduce the worker's mortgage was granted.

Summary No. 24

This worker contended that the Workers' Compensation Board unreasonably denied his request for a partial commutation of his two permanent disability pensions for the purpose of reducing a mortgage on his home. The Board had ruled that his request did not meet the guiding principles or criteria for pension commutations.

Our review of the information on record indicated that the worker appeared to be a reasonable person who had rehabilitated himself subsequent to his two industrial injuries, and that he had settled into a steady and financially secure employment. It was further established on the basis of financial estimates that a substantially reduced mortgage would enable the worker to eliminate his reported monthly deficit, to save over $1,000 annually for the next four years in interest payments, and, upon disposing of his mortgage obligations altogether, to increase his annual savings to over $4,000. Considering that his mortgage was amortized over 15 years, it was estimated that his net saving over this period of time would amount to more than $60,000. Even though the worker would be left with a smaller pension upon the expiry of the 15-year period, it was found that the savings that could be generated through a partial commutation would more than compensate for that reduction.

On the basis of these findings, the Ombudsman formed the tentative conclusion that the Board's position was unreasonable. It was his possible recommendation that the worker be granted the partial commutation he had requested.

In its response, the Board agreed that by commuting a portion of the worker's combined monthly pension, his financial self-sufficiency would be significantly enhanced. The Board agreed that the merits of individual judgment should prevail in this case, particularly in view of the fact that the existing guidelines relative to commutation requests permit sufficient latitude for such a determination.

Disablement need not occur during a work incident for entitlement to be appropriate. In this instance the Board was persuaded to grant entitlement for a stroke which occurred the day following the worker's volunteer fire-fighting services.

Summary No. 25

This worker was a volunteer fireman, a school custodian and a school bus driver. On a cold winter night in 1977, he was awakened to fight a fire at the country house where two of the students whom he drove lived. In the early morning after the fire was extinguished, the worker returned home and rested until it was time to begin his school-related duties. While making change at lunchtime, he leaned over to pick up a dropped coin, could not straighten up, and fell to the floor with a stroke.

His family physician advised the Board that the worker had experienced at least two warning episodes in the past, but the tension and lack of sleep involved in fighting the fire contributed to his stroke. The Board physicians disagreed, taking the view that the stroke was due to his severe, underlying atherosclerotic disease and not to his work. In June 1984, the Appeal Board accepted the opinion of its medical staff and denied the worker entitlement.

During our investigation we asked an eminent neurologist whether, in his view, a relationship existed between the events of the night in question and the worker's stroke. The specialist responded that the worker was destined to have a stroke, but the fire-fighting was a triggering and accelerating mechanism.

After the Ombudsman wrote the Chairman of the Workers' Compensation Board in September 1985 with his tentative recommendation that the worker be granted entitlement on the basis of aggravation of a pre-existing condition, the medical counsel to Research and Advisory Services at the Board reviewed all the medical documentation. He concluded that the fire-fighting events would have caused the stroke to occur earlier in time, but would not have created more severe impairment. On the basis of his review, the Committee to Review Appeal Board Decisions directed that the worker be granted entitlement for the incident.

Psychotraumatic problems can often be as disabling as the original physical injury and entitlement may prove even more difficult to establish.

Summary No. 26

In January 1978 this worker slipped and fell, injuring his knee during his work as a carpenter. Disability benefits were paid by the Workers' Compensation Board up to October 1978, when it was determined by the Board that the injured worker was capable of resuming his regular employment. The worker, however, felt he was unable to return to work and appealed for continuing benefits on the basis of his having both organic and non-organic conditions arising out of his injury.

The issue of further entitlement was heard by the Appeal Board in July 1980 and a further examination by a psychiatrist was carried out. The additional information obtained was reviewed and in its decision, the Appeal Board concluded that no evidence substantiated that the worker had either a physical or a psychotraumatic condition arising out of his accident to warrant the payment of continuing benefits beyond October 1978.

Our investigation revealed that several examining physicians felt that non-organic factors were contributing to the worker's inability to resume employment in October 1978. Further, the reports of the examining psychiatrist revealed the worker was suffering from a psychogenic regional pain and that the accident had triggered the onset of his condition. Additional medical evidence failed to substantiate that there was any physical disability in the knee as a consequence of the injury.

In the course of the investigation the Ombudsman wrote to the Board in July 1985. In that letter the Ombudsman expressed the tentative opinion that the Appeal Board had been unreasonable to deny the worker entitlement to a psychotraumatic disability award and a tentative recommendation was made that the Board accept the psychiatrists' opinions on file and award the injured worker a 5% provisional disability award, as assessed. Further, in an effort to determine the degree of the continuing condition, it was suggested that the Board undertake an up-to-date psychiatric assessment.

In August 1985 the Board wrote back stating that the Appeal Board had revoked

its decision respecting entitlement to a psychotraumatic disability award and directed that the injured worker be granted a provisional award. The award was paid from the date of accident up to the last assessment conducted by a psychiatrist in 1981. As well, the Board advised that it was making the necessary arrangements to have an up-to-date psychiatric assessment carried out and then to review the worker's ongoing entitlement.

This case proves that flexibility is necessary in the application of policy in order to ensure individual fairness.

Summary No. 27

Since 1948 this steelworker had been employed in the blast furnace area of an Ontario steel plant. It was determined that this worker was exposed to excessive noise levels for various periods of his employment, but that the noise levels, in terms of duration of exposure, did not meet the criteria utilized by the Ontario Ministry of Labour. Accordingly, the Workers' Compensation Board had denied his claim.

In October, 1984, the Ombudsman advised the Workers' Compensation Board that it was his tentative conclusion that the Appeal Board had been unreasonable to conclude that the worker's hearing loss was not the result of his employment exposure. He noted that nine co-workers who worked in the same area as this worker had all had claims for hearing loss allowed by the Workers' Compensation Board. Information was conveyed to the Board that a respected specialist in hearing loss claims felt that the worker's hearing loss was occupational in nature and that, moreover, there was no way of precisely determining the worker's exposure to noise during his early years of employment.

Available evidence indicated that the worker's noise-induced hearing loss could not be connected to excessive noise outside of the workplace and, as other possibilities could reasonably be eliminated, hearing loss related to the work environment was the logical association.

Finally, the Ombudsman noted for the Workers' Compensation Board that individual susceptibility cannot be gauged and that 10% of the population can be affected by noise levels which are below the criteria outlined by the Ministry of Labour for acceptance of a hearing loss claim. The Ombudsman felt that this worker fell into that 10% of the population susceptible to hearing loss when exposed to noise levels below the accepted criteria, and that based on this worker's likely individual susceptibility, he should be granted entitlement for industrial noise-induced hearing loss.

Following receipt of the letter, the Appeal Board reconsidered its decision and by letter of April 26, 1985, we were advised that the Board was prepared to implement the Ombudsman's possible recommendation that this worker be granted entitlement for industrial noise-induced hearing loss.

Statistical Information

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION
FISCAL YEAR 1985-86

ORGANIZATION COMPLAINED AGAINST	WITHIN JURISDICTION	OUTSIDE JURISDICTION	INFORMATION REQUESTS	TOTAL
AGRICULTURE & FOOD	11	17	1	29
ATTORNEY GENERAL	22	65	37	124
ONTARIO MUNICIPAL BOARD	23	22	6	51
PUBLIC TRUSTEE	22	9	8	39
TOTAL ATTORNEY GENERAL	67	96	51	214
COLLEGES & UNIVERSITIES	44	95	20	159
COMMUNITY & SOCIAL SERVICES	178	183	62	423
SOCIAL ASSISTANCE REVIEW BOARD	50	29	3	82
TOTAL COMMUNITY & SOCIAL SERVICES	228	212	65	505
CONSUMER & COMMERCIAL RELATIONS	60	73	69	202
CORRECTIONAL SERVICES	68	18	25	111
CORRECTIONAL CENTRES	806	61	49	916
DETENTION CENTRES	1665	53	42	1760
JAILS	1160	24	37	1221
TOTAL CORRECTIONAL SERVICES	3699	156	153	4008
CITIZENSHIP & CULTURE	6	5	4	15
EDUCATION	16	30	12	58
ENERGY	2	4		6
ONTARIO HYDRO	27	33	9	69
TOTAL ENERGY	29	37	9	75
ENVIRONMENT	25	13	9	47
FINANCIAL INSTITUTIONS	7	11	6	24
GOVERNMENT SERVICES	22	11	18	51
HEALTH	48	51	59	158
PSYCHIATRIC HOSPITALS	122	17	30	169
O.H.I.P.	21	35	18	74
TOTAL HEALTH	191	103	107	401
HOUSING	56	104	84	244
ONTARIO HOUSING CORPORATION	12	29	18	59
TOTAL HOUSING	68	133	102	303
INDUSTRY, TRADE & TECHNOLOGY	2	3	4	9
INTERGOVERNMENTAL AFFAIRS	0	0	0	0
LABOUR	58	38	31	127
HUMAN RIGHTS COMMISSION	29	41	16	86
WORKER'S COMPENSATION BOARD	419	726	609	1754
TOTAL LABOUR	506	805	656	1967
MUNICIPAL AFFAIRS	29	16	11	56
NATURAL RESOURCES	54	33	16	103
NORTHERN AFFAIRS	4			4
REVENUE	29	40	18	87
SKILLS DEVELOPMENT	1	10	3	14
SOLICITOR GENERAL	40	56	16	112
TOURISM & RECREATION	13	10	9	32
TRANSPORTATION & COMMUNICATION	69	105	37	211
TREASURY & ECONOMICS	12	9	5	26
ONTARIO GOVERNMENT OTHER	3	25	233	261
ONTARIO GOVERNMENT TOTAL	5235	2104	1634	8973
COURTS		294	55	349
FEDERAL		672	191	863
PRIVATE		2395	542	2937
MUNICIPAL		723	74	797
INTERNATIONAL		8	2	10
OTHER PROVINCES		28	12	40
NO ORGANIZATION SPECIFIED		42	199	241
TOTAL	5235	6266	2709	14210

Statistical Information

DISPOSITION OF JURISDICTIONA

ORGANIZATION COMPLAINED AGAINST	COMPLAINT SUPPORTED			COMPLAINANT ASSISTED	INDEPENDENTLY RESOLVED	UNSUB-STANTI
	NO RECOMMENDATION	FORMAL RECOMMENDATION ACCEPTED	DENIED			
AGRICULTURE & FOOD	0	0	0	0	0	5
ATTORNEY GENERAL		1		4	1	3
Ontario Municipal Board						7
Public Trustee	1	2	1	1	1	6
TOTAL ATTORNEY GENERAL	1	3	1	5	2	16
COLLEGES & UNIVERSITIES	0	0	1	5	3	14
COMMUNITY & SOCIAL SERVICES	2	5		29	11	31
Social Assistance Review Board		1		6		25
TOTAL COMMUNITY & SOCIAL SERVICES	2	6	0	35	11	56
CONSUMER & COMMERCIAL RELATIONS	0	0	0	10	2	21
CORRECTIONAL SERVICES		1		1	3	2
Correctional Centres		1		48	45	3
Detention Centres				92	78	4
Jails				50	55	1
TOTAL CORRECTIONAL SERVICES	0	2	0	191	181	10
CITIZENSHIP & CULTURE	0	0	0	2	0	2
EDUCATION	0	2	0	0	0	4
ENERGY						2
Ontario Hydro	1			5	2	10
TOTAL ENERGY	1	0	0	5	2	12
ENVIRONMENT	1	0	0	2	0	10
FINANCIAL INSTITUTIONS	0	0	0	1	1	5
GOVERNMENT SERVICES	0	0	0	1	1	7
HEALTH			1	3		21
Psychiatric Hospitals	1			9	9	1
O.H.I.P.		3		8		4
TOTAL HEALTH	1	3	1	20	9	26
HOUSING		1		11		5
Ontario Housing Corp.				3		2
TOTAL HOUSING	0	1	0	14	0	7
INDUSTRY, TRADE & TECHNOLOGY	0	0	0	1	0	0
INTERGOVERNMENTAL AFFAIRS	0	0	0	0	0	0
LABOUR				9	2	14
Human Rights Commission	1			2		6
Worker's Compensation Board		10	2	29	6	217
TOTAL LABOUR	1	10	2	40	8	237
MUNICIPAL AFFAIRS	0	0	0	2	1	8
NATURAL RESOURCES	0	0	0	7	2	9
NORTHERN AFFAIRS	0	0	1	1	0	1
REVENUE	0	1	0	8	2	5
SKILLS DEVELOPMENT	0	0	0	1	0	0
SOLICITOR GENERAL	0	0	0	1	3	14
TOURISM & RECREATION	0	0	0	1	0	7
TRANSPORTATION & COMMUNICATIONS	1	0	0	11	3	17
TREASURY & ECONOMICS	0	0	0	6	0	2
ONTARIO GOVERNMENT OTHER	0	0	0	0	0	0
ONTARIO GOVERNMENT TOTAL	8	28	6	370	231	495

AINTS FOR FISCAL YEAR 1985-86

ESTIGATION DISCONTINUED ONED	WITHDRAWN	SECTION 18	TOTAL
2	2	2	11
1	4	8	22
	4	12	23
4	4	2	22
5	12	22	67
4	6	11	44
7	51	22	178
8	5	5	50
5	56	27	228
6	12	9	60
6	13	13	59
5	255	219	806
6	419	554	1663
6	338	281	1171
3	1025	1067	3699
0	2	0	6
0	4	6	16
			2
	6	3	27
0	6	3	29
1	7	4	25
0	0	0	7
1	10	2	22
2	6	15	48
3	41	33	122
1	2	3	21
1	49	51	191
2	26	11	56
3	4		12
5	30	11	68
0	1	0	2
0	0	0	0
3	10	20	58
6	5	9	29
5	48	92	419
4	63	121	506
1	14	3	29
0	21	5	54
0	1	0	4
3	6	4	29
0	0	0	1
5	5	12	40
1	2	2	13
3	14	15	69
0	2	2	12
0	0	3	3
5	1350	1382	5235

GLOSSARY

COMPLAINT SUPPORTED

NO RECOMMENDATION - At times the Ombudsman will support a complaint but decide no recommendation is appropriate given all the circumstances.

FORMAL RECOMMENDATION ACCEPTED - Those complaints where the governmental organization agrees to implement the Ombudsman's recommendation.

FORMAL RECOMMENDATION DENIED - Those complaints where the governmental organization refuses to implement the Ombudsman's recommendation. The discrepancy between the total number (58) and the fact that only 19 case summaries are presented in our Volume II is explained as follows: many cases are resolved between the end of our fiscal year (when our statistics are compiled) and the publication date of our report.

INDEPENDENTLY RESOLVED - Many complaints are resolved independent of the Ombudsman's involvement. This can occur at any point in the investigative process prior to the Ombudsman issuing a final report.

UNSUBSTANTIATED - Those complaints where the Ombudsman's investigation reveals no grounds to support the complainant's contention.

INVESTIGATION DISCONTINUED - The Ombudsman uses his discretion to discontinue an investigation at any point prior to issuing a final report for a number of reasons:

ABANDONED - Attempts to communicate with the complainant are unsuccessful (eg., complaints from inmates of correctional facilities who are released in the course of our investigation and leave no forwarding address).

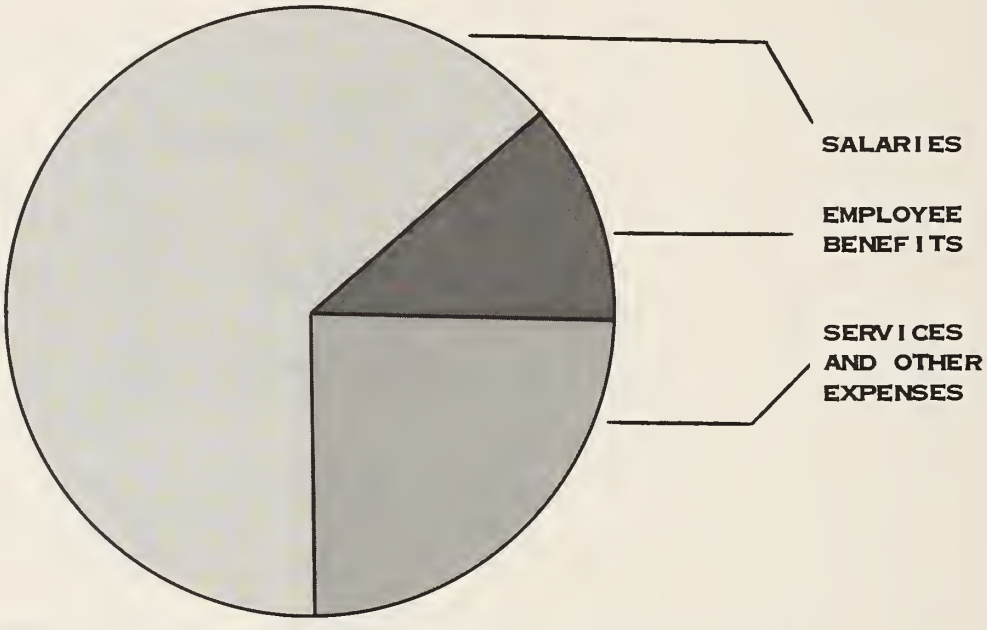
WITHDRAWN - At the request of the complainant. In many cases information is provided to the complainant and, although there is no resolution the complainant does not wish us to pursue the matter.

SECTION 18 - Refers to Section 18 of the Ombudsman Act which allows the Ombudsman the discretion to discontinue the investigation if, for example, there is an adequate alternative remedy or the complaint is frivolous or having regard to all the circumstances no further investigation is necessary.

COMPLAINT ASSISTED - Those complaints where the Ombudsman renders assistance and usually involve tangible corrective action taken by the governmental organization.

DISPOSITION OF NON-JURISDICTIONAL COMPLAINTS, INFORMATION REQUESTS/SUBMISSIONS

Organization	Information Provided	Inquiries Made	No Action Possible	Total	Percent
Provincial	2784	799	155	3738	41.7
Federal	783	54	26	863	9.6
Municipal	735	48	14	797	8.9
Private	2821	78	38	2937	32.7
Courts and Judges	322	8	19	349	3.9
Other Provinces	36	0	4	40	.4
No Organization Specified	192	6	43	241	2.7
International	10	0	0	10	.1
TOTAL	7683	993	299	8975	100.0



ACTUAL EXPENDITURES FOR THE FISCAL YEAR 1985-86

Salaries	$3,889,000	Other Services	169,100
Employee Benefits	547,300	Furniture & Office Equipment	86,800
Travel & Relocation	162,100	Data Processing Equipment	98,300
Telephone, Mailing & Delivery	179,200	Office Supplies & Devices	68,200
Building Rent	525,700	Books & Publications	74,100
Equipment & Other Rentals	116,000	Other Supplies & Equipment	58,900
Professional Services	76,400		
	TOTAL $6,052,000		

PART II
RECOMMENDATIONS DENIED

INTRODUCTION

Part II is devoted entirely to detailed summaries of cases where the recommendation of the Ombudsman was denied by the governmental organization.

Tables of recommendations outstanding from previous reports are included as appendices.

Detailed Summary No. 1

Mr. H's complaints against the Ministry of Education were first registered with the Office of the Ombudsman on September 3, 1985. He complained that the Minister had unreasonably declined to reinstate his Teaching Certificate following an undue delay in the consideration of the merits of his request. Further, Mr. H complained that the Minister unreasonably failed to provide him with reasons for his decision and that throughout the entire application process, he and his representatives were treated with discourtesy.

On October 8, 1985, I wrote to the Minister of Education, the Honourable Sean Conway, to advise him of my intention to investigate Mr. H's complaints. Mr. Conway was invited to provide my Office with a statement of his position with respect thereto. On January 20, 1986 we received a response from the Deputy Minister, Dr. G.R. Podrebarac, on the Minister's behalf which indicated that the Minister was not completely satisfied that Mr. H would be able to fulfill the statutory requirements relating to the duties of teachers. Dr. Podrebarac also advised that there was no statutory time limit in which a decision to reinstate a certificate of qualification must be made.

On January 22, 1986 a member of my investigative staff attended at the Ministry to review the Ministry's documentation with respect to these complaints and interviewed the Executive Secretary to the Minister's Certificate Review Advisory Committee (CRAC) which had considered Mr. H's reinstatement application and which had prepared a report for the Minister's consideration. All of the relevant documents and correspondence from the Ministry's files and from the file of Mr. F, Mr. H's legal counsel, were reviewed. Our investigation revealed the following facts.

In August, 1980, Mr. H was charged with indecent assault and illicit sexual intercourse with a minor. The minor in question was his adopted daughter, then seventeen. Mr. H was found guilty on both counts on June 30, 1981, and on July 28, 1981, he was sentenced to eighteen months incarceration plus two years probation. He was detained in the county jail in Brockville, Ontario.

Upon his conviction, the Minister of Education referred the matter of his professional standing to the Ontario Teachers' Federation with the request that they handle it according to the Relations and Discipline Procedures which are provided for in a Regulation made under the *Teaching Profession Act*. As well, the Minister granted consent to the County Board of Education which was Mr. H's employer to terminate its teaching contract with Mr. H.

On November 19, 1981, Mr. H was placed on day parole. He worked for a courier service and spent his evenings at a half-way house. Mr. H received his full parole in January 1982, six months after his conviction. In addition to the standard conditions of parole, Mr. H was required to abstain totally from the use of all intoxicants and to attend Alcoholics Anonymous meetings regularly.

During the months of February and March of 1982, the Relations and Discipline Committee of the Ontario Teachers' Federation conducted a hearing into Mr. H's conduct with a view to determining whether his Teaching Certificate ought to be revoked. In May, 1982 the Committee recommended to the Executive of the Federation that his certificate be suspended. The Federation in turn, made this recommendation to the Minister.

In January 1983, Mr. H received an early termination of his probation order as he had complied with the conditions of his parole and maintained a low profile while in the institution as well as in the community without any further police intervention.

On January 31, 1983, Mr. H applied for reinstatement of his Teaching Certificate to the Ontario Teachers' Federation. The OTF referred the matter to its Relations and Discipline Committee in February. In November, 1983 a reinstatement hearing was held at which time Mr. H and his legal counsel were present. On the basis of the submissions and the interview with Mr. H at the reinstatement hearing, the Federation recommended that the Minister reinstate Mr. H's Teaching Certificate as of January 31, 1984.

On February 28, 1984, a Ministry official wrote to Mr. H requesting that he submit a formal application to the Minister for the reinstatement of his Teaching Certificate. This was completed and sent to the Ministry on March 2, 1984.

On November 2, 1984, Dr. Stephenson, then Minister of Education, referred the matter to the Certificate Review Advisory Committee and a hearing was held on January 17, 1985.

Following the hearing, the Committee recommended to the Minister that Mr. H's Teaching Certificate be reinstated.

No action was taken on the Committee's report until August 19, 1985 when Mr. Conway wrote to Mr. H and advised that he had decided not to reinstate his Teaching Certificate at that time.

In addition to all of the above, I note that at no time has Mr. H's competence as a teacher been in question. As well, throughout this entire period the H family unit has remained united and supportive. Mrs. H has been able to supplement the family income in her capacity as a part-time teacher with a Separate School Board. With the exception of their daughter, who has not had any contact with the family since Mr. H's conviction, the children have either continued to live in the family home with Mr. H, or visit regularly when their jobs or education take them to other communities.

With respect to Mr. H's contention that the Minister's decision to deny his application for reinstatement was unreasonable, I note that the Minister had before him the following information:

1. A pre-sentence report prepared by Mr. H's Probation/Parole Officer, Ms. L. In this report, Ms. L stated that there was no evidence of antecedent criminal behaviour nor any history of sexual deviation or problems in Mr. H's background. Also, Mr. H was unanimously regarded by his co-workers as a courteous and polite individual dedicated to his teaching job which he performed in a most professional manner.

   In her report, Ms. L noted that the offence for which Mr. H was convicted did not seem to express behaviour consistent with his personality as described by his family, friends and co-workers. Over the years he had expended a considerable amount of time and energy working with organizations involving young native people and young children and was regarded by his peers as an individual with a great sense of devotion and accomplishment. Ms. L noted however, that there was concern about Mr. H's alcohol problem which he was not, prior to sentencing, prepared to readily acknowledge. However, it was Ms. L's opinion that further illegal behaviour was unlikely.

2. A psychiatric report prepared by Dr. C prior to sentencing which found no evidence in relation to disturbed sexual orientation, such as a tendency towards pedophilia, nor any evidence of any other abnormal sexual attitude. Further, Dr. C wrote that from a psychiatric diagnostic standpoint, Mr. H presented with mixed anxiety and depressive features secondary to the stress of his present predicament, in addition to features of habitual excessive alcohol abuse and some features of alcohol addiction. "I could find no evidence of any major personality defect or serious sexual deviation which in any way would make Mr. H a risk to the community at large..."

3. The report of the Ontario Teachers' Federation's Relations and Discipline Committee to the Federation's Executive, dated March 26, 1982 which found Mr. H to have failed to uphold the honour, dignity and ethical standards of the teaching profession and to be, accordingly, in breach of section 13 of the Regulation made under the *Teaching Profession Act.*

4. A psychiatric report from Dr. B, a psychiatrist with a city hospital, who wrote to the Committee that at the time of the offence for which Mr. H was convicted, he did have problems with alcohol classified as habitual excessive alcohol abuse with early signs of alcohol addiction. Dr. B wrote that since the time Mr. H started with psychiatric assistance in June of 1981 he had stayed sober and his depressive symptoms had disappeared. It should be noted that Dr. B had been seeing Mr. H as an out-patient on a regular basis. Dr. B was satisfied with Mr. H's progress, improvement and recovery and noted that there appeared to be no indications for further continuation of psychiatric treatment. It was Dr. B's opinion that there appeared to be no contraindications on psychiatric grounds that Mr. H be permitted to pursue his teaching career.

5. A letter from Mr. H's Probation Officer, Mr. R, dated May 27, 1983 which indicated that all conditions of parole were followed without problems. As well, Mr. R reported

that contact was maintained with Dr. B, who reported complete satisfaction with Mr. H's progress. Accordingly, Mr. R wrote to the OTF and indicated that he would not hesitate to support Mr. H in his endeavours to regain his teaching status as he had taken all the necessary steps to rehabilitate himself and his progress had been monitored with all indicators being positive.

6. The recommendation of the Ontario Teachers' Federation Executive, dated December 5, 1983, which recommended that the Minister reinstate Mr. H's Teaching Certificate as of January 31, 1984. In a letter dated January 5, 1984, the Secretary Treasurer of the Ontario Teachers' Federation wrote to the Ministry that:

> The Committee was satisfied that the evidence submitted confirmed that Mr. H had overcome his alcohol addiction which the probation order clearly indicated had been the major problem related to his offence. It was pointed out that Mr. H was currently involved in his community and his church and has a full time position with a personnel organization.

7. A second psychiatric report from Dr. B dated December 24, 1984 which was requested by the CRAC prior to Mr. H's hearing in January 1985. Dr. B reported that he had examined Mr. H on December 5, 1984 and noted that it appeared that since June of 1981, Mr. H had stayed sober and had not had the urge to drink alcoholic beverages. Dr. B also noted that his depressive symptoms had not recurred at any time prompting Dr. B to conclude that Mr. H had overcome his difficulties. Dr. B reiterated his opinion noted above.

8. The report of the CRAC following its hearing on January 17, 1985. In its report, the Committee wrote "it is the feeling of the Committee that reaching the decision concerning Mr. H's application has already occupied a lengthy interval of time. With respect it urges an early communication of the decision, whatever it is, to Mr. H." The Committee attached importance to the facts attesting to Mr. H's exemplary behaviour in passing the stages of incarceration, parole, and probation; his acceptance of psychiatric assistance and of membership in Alcoholics Anonymous; and his search for and success in transitional employment. Beyond this, Mr. H applied for and secured the Ontario Teachers' Federation's support. The report also noted Dr. J's reservations about the psychiatric information. However, the report went on to note that:

> We feel that the shortcomings are as much or more the result of the inadequacy of the psychiatrist's reports. Mr. H's presentation on these matters was not convincing. However, the total body of information and Mr. H's total presentation indicated that he has made a good rehabilitation. After meeting with Mr. H and reading the submissions we believe that Mr. H is not likely to practise pedophilia. We are not sufficiently bold to guarantee his indefinite, much less permanent, cure from addiction to alcohol. Evidence concerning recent and current avoidance is encouraging. In short, our study of the substantial dossier and the meeting with Mr. H have satisfied us that he deserves to have his certificate reinstated and we so recommend.

With respect to Mr. H's contention that the Minister of Education unreasonably failed to apprise him of the reasons for his decision, I note that on August 19, 1985 the Minister wrote to Mr. H and advised him that he had decided not to reinstate his certificate. He stated "having considered all the information and recommendations provided, I have decided, as authorized in clause (1)(m) (sic) of the *Education Act*, not to reinstate your teaching qualification at this time."

Following receipt of the Minister's letter, Mr. F, Mr. H's legal counsel, wrote on August 26, 1985 asking for reasons. Further, Mr. F requested information as to what process he and Mr. H could expect if and when a subsequent application was appropriate. The Minister responded to Mr. F's inquiry on November 6, 1985 and while he outlined the information which he had considered in making his decision, he did not provide any reasons. Further, he indicated that there was no statutory timeline for making his decision. Finally, the Minister invited Mr. H to reapply for reinstatement of his certificate in April, 1986.

With respect to Mr. H's contention that there was an unreasonable delay in the consideration of the merits of his application, I note that on March 2, 1984, Mr. F wrote on behalf of Mr. H in order to officially apply for the

reinstatement. A letter of acknowledgement dated March 13, 1984 was apparently not received, as Mr. F wrote to the Minister on May 4, 1984 to request an answer to his March 2 letter. On June 1, 1984, Mr. F again wrote to the Minister requesting an answer to his letter of May 4. These subsequent inquiries by Mr. F do not appear to have been acknowledged or answered.

On June 4, 1984, Mr. M, M.P.P., wrote to Dr. Stephenson on behalf of Mr. H. Mr. M felt that it was unfair for Mr. H to await a response due to Ministry reorganization and requested Dr. Stephenson to review the file. Dr. Stephenson did not refer the matter to the Certificate Review Advisory Committee until November 2, 1984.

On February 15, 1985 the CRAC recommended to the Minister of Education that Mr. H's Teaching Certificate be reinstated. The Minister, then the Honourable Keith Norton, did not take any action with respect to its recommendation. Following the Ontario general election on May 2, 1985, Mr. Larry Grossman was appointed Minister of Education. Mr. Grossman did not take any action with respect to the CRAC's recommendation. On June 26, 1985, Mr. Sean Conway was appointed Minister of Education.

After carefully considering all of the evidence pertaining to Mr. H's complaints, I wrote to the Minister on February 24, 1986 and in accordance with section 19(3) of the *Ombudsman Act* advised him of my tentative conclusions and recommendations respecting this matter.

Having noted Dr. Podrebarac's submission on the Minister's behalf that the Minister was not completely satisfied that Mr. H would be able to fulfill the duties of teachers as stipulated by section 235 of the *Education Act* it was my tentative conclusion that the evidence before the Minister did not support this conclusion and that it appeared to me that the Minister's decision to refuse to reinstate Mr. H's Teaching Certificate may have been unreasonable.

I also wrote that while he did outline to Mr. F the information which he had considered in making his decision, the Minister did not provide any reasons. The reinstatement process is one in which a teacher is afforded the opportunity to convince his colleagues at the Ontario Teachers' Federation, and the Minister of his worthiness to teach. In the absence of reasons, a teacher is uncertain as to how to avail himself of that opportunity. Accordingly, it was my tentative conclusion that notwithstanding the fact that the legislation does not require the Minister to provide reasons, the failure to do so may have been unreasonable.

Finally, I tentatively concluded that the eight months it took the former Minister of Education, Dr. Bette Stephenson, to refer Mr. H's application to the CRAC, and the additional six months it took for the final decision to be made following the receipt of the CRAC report and recommendation may have been unreasonable.

Having formed these tentative conclusions, I proposed two possible recommendations pursuant to section 22(3) of the *Ombudsman Act* as follows:

1) The Minister should provide reasons for his August 19, 1985 decision and, in all future cases, outline the process which an applicant is expected to employ in order to have the reinstatement of a Teaching Certificate considered, and provide the applicant with reasons for the decision taken by the Minister.

2) The Minister should reinstate Mr. H's Teaching Certificate.

Before reaching any final conclusions in this case I requested the Minister to respond. No response was received. However, a member of my staff spoke with a member of the Minister's staff on March 14, 1986 and was advised that while the Minister desired to make representations to me, he would not be in a position to do so immediately. In response, my investigator indicated that the tentative conclusions and recommendations noted above would be made final in light of the reporting year end deadline imposed upon me, but that it was open to the Minister to make his submissions at any time. Indeed, it was my sincerest hope that this complaint would be satisfactorily resolved through that process. Accordingly, I concluded pursuant to section 22(1)(b) of the *Ombudsman Act* that the Minister's decision to refuse to reinstate Mr. H's Teaching Certificate was unreasonable and that his failure to provide reasons for his decision was also unreasonable. As well, I concluded that the delay in which the merits of his application were considered was unreasonable.

Consequently, it is my recommendation pursuant to section 22(3) of the *Ombudsman Act*, that:

1) The Minister should provide Mr. H with reasons for his August 19, 1985 decision and, in all future cases, outline the process which an applicant is expected to employ in order to have the reinstatement of a

Teaching Certificate considered, and provide the applicant with reasons for the ensuing decision of the Minister.

2) The Minister should reinstate Mr. H's Teaching Certificate.

It will be recalled from the outset that Mr. H contended that a hallmark of the treatment which he and his representatives received throughout the reinstatement application process was one of discourtesy, particularly respecting telephone call-backs and letter acknowledgement. It was my impression that this contention is a result of the delay in making the decision and the frustration which Mr. H experienced. While there is no doubt that numerous telephone calls were made and letters written over the period of Ministry involvement, some of which were apparently not returned or acknowledged, there did not appear to be any evidence respecting discourtesy as it related to rudeness or attitude. Accordingly, I was not prepared to make a formal conclusion respecting this aspect of Mr. H's complaint, though I trust the Minister will ensure that his officials will endeavour to respond to public inquiries as quickly as possible.

My final conclusions and recommendations were reported to the Minister on March 17, 1986 and pursuant to the discretion given to me under section 22(4) and (5) of the *Ombudsman Act*, I referred the matter to the Premier on March 27, 1986. Mr. H was also advised of the results of the investigation at that time.

Since issuing my report to the Premier, I have learned that Mr. H has reapplied for the reinstatement of his Teaching Certificate, following the Minister's suggestion in November, 1985. Though it is still my understanding that the Minister wishes to make representations to me, to date no response has been received.

Detailed Summary No. 2

In January, 1985, Mrs. K brought to the attention of my Office her complaint against a Workers' Compensation Appeal Board decision dated December 6, 1984. Mrs. K contended that the Appeal Board unreasonably denied her application to reconsider its January 9, 1984 decision. In January 1984, the Appeal Board concluded that the preponderance of medical evidence did not support that subsequent to January 12, 1982 Mrs. K was experiencing any organic or psychotraumatic disability related to the compensable accident.

On January 8, 1985, the Honourable Lincoln M. Alexander, P.C., Q.C., Chairman of the Workers' Compensation Board, was notified, in accordance with the requirements of the *Ombudsman Act*, of our intention to investigate Mrs. K's complaint. Mr. Alexander was also asked whether he was prepared to make a statement of the Board's position with respect to Mrs. K's complaint. On January 23, 1985, a reply was received indicating that the Board did not wish to make a statement at that time.

Our file on the complaint was assigned to a member of my investigative staff, who thoroughly reviewed Mrs. K's Workers' Compensation Board file and considered the relevant legislation and Board policy in relation to the issue.

This report will focus only on that part of Mrs. K's complaint which relates to her psychological disability.

On November 19, 1979, Mrs. K, then 48 years old, sustained a work-related injury which was diagnosed as a lumbar strain. She received conservative treatment and returned to work on April 21, 1980. However, she laid off work on two subsequent occasions because of her back pain. Mrs. K has not returned to work since November 19, 1980. The Board granted her temporary total disability benefits for her periods of lost time between November 1979 and January 12, 1982.

The available medical reports revealed that Mrs. K was referred to Dr. S, an internist, in March, 1981. At that time, Mrs. K was complaining of chest pain which she reported had developed four years earlier, and which was accompanied by palpitations and light-headedness. Dr. S noted that, "Review of the systems turns up no important complaints except some fatigue and nervous tension." He recommended an exercise test which he noted had been attempted previously and had been unsuccessful because of acute anxiety.

Dr. G, a physiatrist, examined Mrs. K on April 1, 1981 and in June 1981. Dr. G noted that Mrs. K complained of pain radiating to her hips and her legs. He recommended hydrotherapy. In his August 7, 1981 report, Dr. G recommended that Mrs. K be admitted to the Board's hospital for further observation and physical therapy.

On October 30, 1981, Mrs. K was admitted to the Board's hospital. Dr. V, a Board physician, reported that during the examination on her admission, Mrs. K complained of low back and neck pain and dizziness. Dr. V noted that Mrs. K "... had many inappropriate responses and was tearful at times. It would seem that there are

psychological factors delaying her recovery." In his discharge report dated November 9, 1981, Dr. V noted that Mrs. K had been tearful throughout the treatment program. He was of the opinion that her emotional reaction to her pain was delaying her recovery. He felt that investigation and treatment were required.

On November 12, 1981, Mrs. K was examined by Dr. J, a Board psychiatric consultant, whose report reads in part:

> The patient's description of her symptoms does not suggest any psychophysiological component, that is to say, an aggravation of muscle pain produced by tension of psychological origin. The variable hypoesthesia reported at different times on physical examination, as well as the patient's description of her symptoms and the impressions gained from observation from the patient during the interview, suggest hysterical phenomena.
>
> As far as could be determined through the interpreter, who was not translating word for word on account of the rapidity with which the patient was talking, there was no indication of other psychopathology.

Dr. J concluded that there was evidence of pre-accident psychopathology. He was not of the opinion that there was any psychological disability attributable to the accident itself. Dr. J expressed the opinion that entitlement for compensation should be based on the "... demonstrable organic consequences of [the] injury".

Mrs. K was also examined on November 12, 1981 by a Board Orthopaedic Consultant, Dr. M. Mrs. K complained of back pain and numbness in both lower extremities and, as well, pain radiating into the shoulder and neck areas. Dr. M noted that there was "a tremendous psychogenic" component to her disability. Dr. M concluded that whatever low back contusion or strain Mrs. K might have experienced on November 19, 1979 had not resulted in any continuing type of low back disability.

When Dr. G reexamined Mrs. K on November 18, 1981, he expressed the opinion that although Mrs. K's disability seemed to be "predominantly functional" at that time, there had been "a component of soft tissue disablement". He felt that she was chronically disabled and he recommended that she be referred to a Greek-speaking psychiatrist. In his report dated January 29, 1982, Dr. G was of the opinion that there was "... a considerable component of anxiety and very likely now emotional or psychogenic overlay." He further stated:

> ... I believe consideration must be given to the patient in this circumstance, for the emotional impact that her soft tissue injury is having had upon her, and this of course is a function of her pre-existing emotional fibre. In a more stalwart person, it is unlikely that this type of symptomatology would have occurred and the patient would long since have been able to return to her work, but the accident did not occur in that type of individual, rather in the type of an individual who is our patient Mrs. K, and she has been left with chronic disabling discomfort, albeit predominantly functional at this time.

In February 1982, Dr. A, a Board psychiatric consultant, reviewed Mrs. K's file. His memorandum #48 reads, in part:

> ... her injury was reported to the Board two and one-half years ago, but there was no firm clinical indication that we are faced here with a true and genuine post-traumatic neurosis....

Dr. A concurred with the Claims Adjudication Branch's recommendation that psychiatric entitlement should be denied.

Mrs. K received temporary total disability benefits up to January 12, 1982. The issue of entitlement to benefits subsequent to that date for an organic, as well as a psychological, disability was referred to the Claims Review Branch. It was noted that Mrs. K was not entitled to benefits subsequent to January 12, 1982 as there was no satisfactory medical evidence to support a compensable physical disability beyond that date. In addition, the Claims Review Branch concluded that it had accepted the opinion of the Board's Medical Branch and that any psychiatric disability present was not related to the industrial accident of November 19, 1979.

Mrs. K was referred by her family physician to Dr. D, a neurologist. In his report dated March 18, 1982, Dr. D noted that, on examination, Mrs. K was uncooperative and constantly complained of dizziness and pain all over her body. He was unable to reach a conclusion and he recommended that she be referred to a psychiatrist.

In a report dated March 22, 1982, Dr. C, an otolaryngologist, noted that he had examined Mrs. K at the request of her family physician. In his

report, he indicated that Mrs. K had had episodes of vertigo for 10 years, and that over the previous three months she had had almost daily episodes of dizziness. Dr. C reported that ear, nose and throat examination was normal.

Dr. B, a Greek-speaking psychiatrist, submitted to the Board a report dated March 29, 1982 in which he indicated that he had examined Mrs. K at the request of her family physician. He noted that Mrs. K was still complaining of low back pain radiating to her left leg, and of loss of balance. Dr. B expressed the opinion that there was "an appreciable functional and psychogenic basis for her symptoms." He diagnosed a "somatization disorder" which he related to Mrs. K's work accident. Dr. B noted that Mrs. K was "totally preoccupied with her symptoms and functionally very limited and therefore unemployable." He expressed the opinion that her response to treatment at that time was questionable.

In an Appeals Adjudicator decision dated August 12, 1982, Mrs. K was advised that she did not have entitlement to compensation and medical aid benefits beyond January 12, 1982. The reason given was that it had not been shown that she was suffering from a continuing physical or psychiatric disability which could be related to her compensable accident. In a January 9, 1984 Appeal Board decision, the panel noted and accepted that the preponderance of medical evidence did not support that Mrs. K had suffered from any organic or psychotraumatic disability subsequent to January 12, 1982. The Appeal Board upheld the previous decisions.

During the course of this Office's investigation, I reached the tentative conclusion, pursuant to section 22(1)(b) of the *Ombudsman Act*, that, "the Appeal Board unreasonably concluded that the preponderance of medical evidence does not support that Mrs. K suffered from any psychotraumatic disability related to her November 19, 1979 accident, and therefore was not entitled to temporary compensation benefits subsequent to January 12, 1982." Mr. Alexander and the accident employer were advised of my tentative conclusion and recommendation in letters dated May 2, 1985. In support of my tentative opinion, I gave the following information:

> I am not persuaded that there is a preponderance of medical evidence which does not support that Mrs. K suffered from a psychotraumatic disability. At best, there are reports from two psychiatrists, neither of whom spoke Greek. Dr. A's opinion is not based on a personal examination. Dr. J was not of the opinion that a psychiatric disability existed.
>
> The other evidence is provided by Dr. G, the attending physiatrist. He was of the opinion that consideration should be given to Mrs. K for the emotional impact that her soft tissue injury had on her. He further stated that it was unlikely that that type of symptomatology would have occurred "in a more stalwart person".
>
> In my opinion, the most conclusive evidence was from Dr. B, the Greek-speaking psychiatrist who assessed Mrs. K. He expressed the opinion that Mrs. K was "... totally preoccupied with her symptoms and functionally very limited and therefore unemployable." He diagnosed a "somatization disorder" related to her compensable accident. It should be noted that Dr. B was the only psychiatrist to assess Mrs. K without the assistance of an interpreter.

I tentatively recommended, pursuant to section 22(3)(g), that "the Appeal Board should revoke its decision and grant Mrs. K entitlement for her psychological disability."

Mr. Alexander's response, which was received on July 23, 1985, reads, in part:

> Based on the information contained in [the] medical reports, the Appeal Board is of the opinion that Mrs. K's difficulties are primarily rooted in her propensity to anxiety which is frequently commented upon by several of the attending physicians....
>
> Though Dr. B gave a diagnostic impression of "somatization" the panel is of the opinion that this is not a firm clinical indication that we are faced with a true and genuine post-traumatic neurosis. Stedman's Medical Dictionary defines somatization as "the conversion of anxiety into physical symptoms". The fact that Mrs. K sustained what has been described as a soft tissue/ contusion injury to the back, causes the panel to conclude that this could not lead to a legitimate secondary psychotraumatic illness with a direct cause/effect relationship to her work-related incident of November 19, 1979.

Mr. Alexander concluded by stating that the panel could not agree that its decision to deny entitlement for the alleged non-organic component in Mrs. K's claim was unreasonable and, consequently, he would not implement my possible recommendation.

I again considered this case in light of our investigation and the Board's representations. The accident employer did not respond to my May 2, 1985 letter.

In considering Mrs. K's contention, I reviewed all of the medical documentation contained in her Board file in conjunction with Mr. Alexander's comments. I noted that both Dr. G and Dr. B described a direct relationship. While I acknowledged that Dr. G is a physiatrist, Dr. B was the only Greek-speaking psychiatrist to have assessed Mrs. K. In my view, Dr. B provided a specific diagnosis pertaining to a relationship between Mrs. K's psychological component and the accident.

It was my opinion, pursuant to section 22(1)(b) of the *Ombudsman Act*, that the Appeal Board unreasonably concluded that the preponderance of medical evidence did not support that Mrs. K suffered from any psychotraumatic disability related to her November 19, 1979 accident, and therefore was not entitled to temporary compensation benefits subsequent to January 12, 1982. I recommended, therefore, pursuant to section 22(3)(g) of the *Ombudsman Act*, that the Appeal Board revoke its decision and grant Mrs. K entitlement for her psychological disability.

This recommendation was included in a report to the Chairman dated October 8, 1985.

The Board had not formally responded to the report and recommendations by March 27, 1986. I therefore determined that a reasonable length of time had passed without appropriate action on the Board's part and reported the matter to the Premier. The worker was advised of the results of the investigation and the file was closed.

Detailed Summary No. 3

Mr. D's complaint against a decision of the Appeal Board of the Workers' Compensation Board dated February 29, 1984, was received at my Office on April 17, 1984. Mr. D contended that the Appeal Board was unreasonable to deny him an increase in the 35% permanent disability award for his industrial accident of September 13, 1967. The Appeal Board concluded that the 35% partial disability award properly reflected the degree of residual compensable portion of the disability as a result of the industrial accident of September 13, 1967.

On May 7, 1984, the Honourable Lincoln M. Alexander, P.C., Q.C., then Chairman of the Workers' Compensation Board, was notified in accordance with the requirements of the *Ombudsman Act*, of our intention to investigate Mr. D's complaint. Mr. Alexander was invited to make a statement of the Board's position on Mr. D's case.

On May 10, 1984, the then Assistant Secretary responded on Mr. Alexander's behalf by stating that the Board did not wish to make a statement at that time.

This complaint was assigned to a member of my investigative staff, who thoroughly reviewed Mr. D's Workers' Compensation Board claim file, discussed the complaint with Mr. D, and considered the relevant legislation and Board policy and practice in relation to the issue.

Our investigation revealed that on September 13, 1967, Mr. D was struck in the back and knocked off balance by a front end loader while working as a bricklayer. He was diagnosed as having suffered acute cervical and lumbosacral strain. He was unable to return to construction work and in 1971, he was placed in a light work position as a jewel polisher, where he continued until 1980 when the deterioration of his condition forced him to retire from the workplace at the age of 46.

In February of 1972, Mr. D was diagnosed as having ankylosing spondylitis, a chronic progressive form of arthritis distinguished by inflammation and eventual fusion of a number of lumbar joints. The Appeal Board initially rejected entitlement for this condition in a decision dated April 14, 1977.

The Appeal Board, in its more recent decision dated February 29, 1984, concluded that, "The opinion of the Board's Medical Branch is that the condition, diagnosed as ankylosing spondylitis, was not the result of the industrial accident".

During the course of this Office's investigation, I reached the possible conclusion, pursuant to section 22(1)(b) of the *Ombudsman Act*, that:

> The Appeal Board, in its decision dated February 29, 1984, was unreasonable in not having concluded that the non-compensable

condition diagnosed as ankylosing spondylitis was aggravated and made symptomatic by the industrial accident of September 13, 1967.

I notified the Board and the accident employer of this possible conclusion in letters written pursuant to the provisions of section 19(3) of the *Ombudsman Act*.

In support of my tentative conclusion, I referred to the following evidence:

> ... ankylosing spondylitis was first diagnosed by Dr. P, Mr. D's family physician, in February 1972. Dr. C, orthopaedist, in a report dated May 23, 1973, indicated that the "presumptive diagnosis of ankylosing spondylitis can now more confidently be made". Mr. D continued to receive treatment and was referred to a rheumatologist for a more definite diagnosis in 1977.
>
> In a report dated February 2, 1977, addressed to Dr. H of the Board, Dr. O, rheumatologist, stated the following:
>
> > In regard to any possible relationship to the former injury received, one can say unequivocally that the injury did not cause the spondylitis in an etiologic sense. *However, it is quite probable that the injury may have acted as a provoking or aggravating factor, drawing attention to the symptoms of the spondylitis earlier than what might have otherwise have occurred.* [Emphasis added.]
>
> In 1981, the Board increased Mr. D's pension to 35% from the 15% which he was awarded in 1976. The examining physician, Dr. W, noted that "if he were given entitlement at this late date for his neck, an additional 25% would be recommended. The neck symptoms, I feel, are related essentially and solely to the ankylosing spondylitis".
>
> In a report dated November 8, 1982, Dr. B, Mr. D's treating rheumatologist, expressed the view that the 35% pension given by the Board was inappropriate and that the true disability was more likely to be 80%. This point of view was also expressed by Dr. K, Mr. D's family physician, in a report dated November 18, 1982, wherein he states that Mr. D was a candidate for an award greater than 35%.
>
> My investigation has taken note of a report dated April 29, 1983, submitted by Dr. B to Mr. D's M.P.P., which outlined the following:
>
> > There is no question that he clinically has ankylosing spondylitis and *I have seen patients in whom the process appears to have been turned on by an accident.* [Emphasis added.] We have had a number of successful cases with this at the Workmen's Compensation Board level. It is difficult however to prove this because the disease is sporadic and is generally genetic in its susceptibility and it is equally possible that he would have developed it anyway. However, it has been my experience [sic] it has been interesting in that a number of people who had no previous back problems and then had a work-related injury subsequently getting increasing pain and stiffness throughout their back and are eventually diagnosed as ankylosing spondylitis.
>
> My investigation has also considered the opinion of Dr. E, Board Surgical Consultant, indicating that ankylosing spondylitis is a non-compensable problem.

In my tentative recommendation, I also made reference to a complaint which had been previously investigated by my Office where the disability was also diagnosed as ankylosing spondylitis after a compensable back injury had been sustained. During the course of that investigation, my Office obtained the opinion of Dr. S, a respected rheumatologist who has a special interest in, and who has conducted research into this disease. I pointed out that Dr. S had rendered the opinion that his research had brought him to the conclusion that, "[He has] seen enough people who have had accidents to know that they can be very severe aggravators of the disease".

I further stated the following in support of my tentative recommendation:

> It is my view that there is sufficient evidence on file to indicate that ankylosing spondylitis should be accepted as a compensable part of Mr. D's disability. His symptoms in the back and neck have been present and progressive since his compensable accident of September 13, 1967, and this is consistent with the nature of the disease. The opinions of Drs. O and B, rheumatologists are, in my view, supportive of a relationship between

> Mr. D's accident and the activation of his ankylosing spondylitis. Further, the medical documentation on file records that Mr. D experienced no neck or back problems before the date of his accident. Aside from the fact that he had an appendectomy at the age of 20, no other medical problems are documented before the accident date. This, in my view, supports the tentative position that the trauma in September 1967 was a factor in the precipitation of ankylosing spondylitis as per the argument advanced in Dr. B's letter of April 29, 1983 and supported by Dr. O. It is also my opinion that this view is indirectly supported in this case by the previously expressed opinion of Dr. S.
>
> It also appears inconsistent to me for the Board to have extended entitlement for Mr. D's residual low back disability and not his residual cervical problems when he is suffering from the same disease throughout the spine. The accident history clearly documents injury to the cervical area, and entitlement has been accepted by the Board. Since the cervical injury, like the low back strain, did not resolve, it would appear consistent for the Board to accept entitlement for this aspect of Mr. D's disability as well and award benefits accordingly.

I tentatively recommended, pursuant to section 22(3)(g) of the *Ombudsman Act*, that:

> The Appeal Board should revoke its decision of February 29, 1984 and allow entitlement for the condition diagnosed as ankylosing spondylitis as having been aggravated by the compensable accident, and accordingly increase the 35% permanent disability award, in accordance with its policy on pre-existing conditions, to properly recognize his spinal disability.

In a letter dated May 21, 1985, Mr. Alexander responded to my tentative conclusion and recommendation. In part, Mr. Alexander indicated that during the adjudication of this claim, Dr. E, a Board Surgical Consultant, rendered the opinion that, "... a *simple traumatic episode per se*, plays no part in the essential causation of ankylosing spondylitis", and that this position was shared by his peer members within the Board's Medical Services Branch.

Addressing myself to the above, it would not appear reasonable to me to describe Mr. D's accident as "a simple traumatic episode". Documentation on file detailing the accident of September 13, 1967 indicates that Mr. D was knocked off balance when he stepped into the path of a front end loader, the blow being severe enough to knock his hard hat off. He was struck in the mid-back, and jerked his neck back during the fall.

Further, I would agree that trauma per se "plays no part in the essential causation" of ankylosing spondylitis; however, this is not my argument. My position is that the trauma made an underlying condition, i.e. ankylosing spondylitis, symptomatic, thereby aggravating and making greater Mr. D's overall disability.

Elaboration of my argument will become clear as follows:

In his letter, Mr. Alexander goes on to state that Dr. E acknowledged that Mr. D's overall degree of disability exceeded 35% due to the co-existent diagnosis of ankylosing spondylitis; however, Dr. E expressed the view that, "This is not a condition that we can recognize as compensable in terms of our mandate under the Compensation Act".

My possible recommendation, as outlined in my letter pursuant to section 19(3), clearly stated that the Board should increase Mr. D's 35% disability award "in accordance with its policy on pre-existing conditions".

The Board's Claims Adjudication Branch Procedures Manual, Document 33-02-20, covering "Pre-existing Conditions", reads as follows: "The presence of any condition pre-existing the accident may have an influence on the extent of entitlement granted to an injured employee."

Point 4, under "General Information" in this Document, states: "Unrelated, non-occupational health problems *may exist* prior to the compensable injury, or *may arise subsequent to the establishment of a compensable claim.*" [Emphasis added.] For instance: "(e) Congenital Defects."

Under "Permanent Disability" of this same Document, Point 1. states the following:

> The presence of a pre-existing condition is reflected in any permanent disability award when the degree of disability found in such cases is increased owing to the underlying condition....

The above Board policy indicated to me that the aggravation of Mr. D's pre-existing ankylosing spondylitis could indeed be considered compensable under the mandate of the *Workers' Compensation Act* and the Board's Policies and Administrative Directives dealing with the adjudication of pre-existing conditions.

Mr. Alexander, in his letter also advised me that, "The panel members are also of the opinion that the statement taken from Dr. O's report and outlined in the concluding paragraph of your submission, actually lends support to their position in this case."

Having again reviewed Dr. O's report of February 2, 1977, it appeared to me that his observation to the effect that, "It is quite probable that the injury may have acted as a provoking or aggravating factor, drawing attention to the symptoms of the spondylitis earlier than might have otherwise have occurred", clearly gives support to the argument that the trauma sustained on September 13, 1967 was a "provoking" or "aggravating factor" which made symptomatic a pre-existing condition. This evidence, as well as the opinions of Drs. B and S, supported the position that Mr. D's disability should be accepted as compensable under the above-mentioned Board criteria.

Mr. Alexander further indicated that, "The panel members have elected to confine themselves solely to the events and circumstances pertinent in Mr. D's claim", although I had compared this case and another case previously investigated by my Office where the issue under investigation was similar to this one. The Board eventually accepted ankylosing spondylitis on an aggravation basis in that particular case and granted an increase to the original pension award to recognize it.

Finally, Mr. Alexander advised me that the Appeal Board would not be implementing my possible recommendation.

Having reviewed the Board's response, I found that I had not been presented with any evidence or argument which would cause me to alter my previous position. Therefore, it was my opinion, pursuant to section 22(1)(b) of the *Ombudsman Act*, that the Appeal Board decision dated February 29, 1984 was unreasonable in concluding that Mr. D's condition, diagnosed as ankylosing spondylitis, was not aggravated and made symptomatic by the industrial accident of September 13, 1967.

I recommended, therefore, pursuant to section 22(3)(g) of the *Ombudsman Act*, that the Appeal Board revoke its decision of February 29, 1984 and allow entitlement for the condition diagnosed as ankylosing spondylitis, as having been aggravated by the compensable accident, and accordingly increase the 35% permanent disability award, in accordance with its policy on pre-existing conditions, to properly recognize his spinal disability.

This recommendation was included in a report to the Chairman dated September 3, 1985.

The Board had not formally responded to the report and recommendations by March 27, 1986, although it had sought medical clarification. I therefore determined that a reasonable length of time had passed without appropriate action on the Board's part and reported the matter to the Premier. The worker was advised of the results of the investigation and the file was closed.

Detailed Summary No. 4

Mr. G's complaint against the Workers' Compensation Board was first brought to my attention by letter dated May 9, 1984. On May 25, 1984, the Workers' Compensation Board was notified of our intention to investigate Mr. G's complaint that the Appeal Board was unreasonable to have concluded that Mr. G's 10% pension award properly reflected the degree of his residual organic disability. The complaint was assigned for investigation to members of my investigative staff.

In my letter written pursuant to section 19(3) of *Ombudsman Act*, I formed the tentative opinion that the Appeal Board should revoke its decision of October 3, 1983 and grant an increase to the current 10% disability award Mr. G receives in recognition of the loss of functioning in the cervical spine. Further, I recommended that Mr. G be assessed for a permanent disability award in recognition of a frozen left shoulder.

In this report, I have addressed myself solely to the issue of a pension in recognition of the frozen left shoulder. However, I am continuing my investigation with respect to Mr. G's entitlement to an increase in the pension award which recognizes the loss of capacity in his cervical spine.

Mr. G had been employed by the accident employer, a bakery, as a baker's assistant for 18 years at the time of the accident on January 11, 1979. Mr. G was lifting a pail of icing weighing approximately 35 pounds when he experienced neck and left shoulder pain, radiating down into the left arm. Entitlement was granted for a cervical strain superimposed on degenerative disc disease, at the C5-6 and C6-7 levels, and for a left shoulder strain. Full benefits were paid for the period January 12, 1979 to May 26, 1980 when benefits were reduced to 50%, continuing until September 1, 1980. Mr. G was assessed for a permanent disability award on May 26, 1980, resulting in a 10% pension. Following an appeal by Mr. G, the rating was confirmed on August 7, 1980.

My review of this file included a careful consideration of the medical evidence, both from Mr. G's attending physicians and opinions rendered by Workers' Compensation Board medical personnel.

Specifically, Dr. W, an orthopaedist, wrote on June 11, 1979 that:

> This man who has complained of a considerable amount of pain in his left shoulder has mainly got I think, a frozen shoulder but he also has a fair amount of cervical spondylolysis. He definitely has some changes going down into his arms. His reflex in his triceps is absent on the left side as compared to the right. His muscle power is slightly diminished on the left side. He tends to be a little more rigid and protective of his left side than he is on the opposite side and one feels there is definite limitation of his shoulder by about three-quarters of the normal range and although I feel he has a cervical spondylolysis I believe that he also has a rotator cuff problem ... I am also going to ask Dr. S to have a look at this man to see whether or not he feels there is anything to be done about his cervical spine....

In this regard, Dr. S, a neurosurgeon, noted in his report of June 15, 1979:

> On examination he had severe restriction of movement in his neck in all directions. Shoulder movement on the left was restricted and very painful on flexion, extension and rotation. The reflexes in the left upper extremities seemed to be reduced but I thought he was holding himself rather rigidly. There was apparent weakness of the left upper extremity.... X-rays were reviewed and they show considerable degenerative changes throughout the cervical spine. Undoubtedly he has cervical spondylosis and a secondary frozen shoulder.

Dr. S concluded that Mr. G ought to be admitted to the Hospital and Rehabilitation Centre for intensive physiotherapy.

Also of interest was a report dated June 30, 1981 from Dr. Z, an orthopaedist. Dr. Z noted that:

> Patient has complete stocking hypoesthesia to pinprick of the left hand from the fingers to the chest.... Patient has persisting pain and discomfort in the left arm and sort of a shoulder/hand syndrome type of fashion.

In a report dated September 28, 1982, Dr. C, orthopaedic surgeon, noted that:

> There was tenderness in the cervical/dorsal region with 25% range of movement and it was difficult to examine him. The right shoulder was mobile. The left shoulder was stiff.

Further, a report dated June 7, 1983 from Dr. F, orthopaedic surgeon, noted that:

> He tends to hold his shoulder up in a fairly rigid fashion and has very marked restriction of motion in the left shoulder.... His neck range of motion reveals no lateral bending. Rotation is only 20 degrees and flexion/extension is nil as well.... This man has cervical degenerative disc disease with left brachalgia.

Mr. G was admitted to the Hospital and Rehabilitation Centre on August 1, 1979. The Temporary Admission and Discharge Report noted that:

> This man is tender over the whole of the cervical spine, and as far as T5, and over the left scapula and left shoulder and also over the arm and the anterior chest. This seemed to be a type of skin tenderness.... He had an impairment to sensation over the whole area that demonstrates skin tenderness.

The discharge diagnosis was cervical strain with underlying degenerative disc disease.

Mr. G was readmitted to the Hospital and Rehabilitation Centre under the PSEM program on September 14, 1979.

A report by Dr. B, general surgeon, dated September 18, 1979 stated that:

> I feel that Mr. G is experiencing discomfort in his neck on the basis of the degenerative changes that are present there. X-rays of his left shoulder showed no abnormalities and I am afraid that he is developing a frozen shoulder on the basis of disuse.

While noting that Mr. G appeared to be exaggerating his disability, Dr. B nonetheless made the admission diagnosis of:

> Degenerative disc disease of the cervical spine; left shoulder strain; frozen shoulder.

The discharge diagnosis was cervical spondylosis, psychogenic magnification of pain, and conversion hysteria.

As mentioned above, Mr. G was assessed for a pension on May 26, 1980, by Dr. W, general surgeon. Dr. W concluded that Mr. G should be awarded a 10% pension "for his neck based on degenerative problems".

Mr. G's pension rating was confirmed on August 7, 1980 by Dr. R, who noted that:

> He does have some evidence of degenerative changes in his neck.... We find that the left shoulder does some atrophy [sic] of the shoulder girdle muscles.... He has quite marked tenderness throughout the upper portion of the left shoulder arm.... His left hand did show some mild discolouration. He has quite marked gross tremors throughout his entire body. He has anaesthesia to pinprick throughout most of the left side of the body....

Dr. R noted the final diagnosis as "chronic left shoulder & neck strain", and impairment as "pain, limited function, numbness". This notwithstanding, Dr. R confirmed the award, saying there was "a very marked psychiatric &/or psychogenic problem".

On the basis of the information gathered during the investigation, I wrote to Mr. Alexander on April 4, 1985 and outlined my tentative conclusion that the Appeal Board was unreasonable to conclude that Mr. G's 10% pension award properly reflects the degree of his residual organic disability. I made the tentative recommendation that the Appeal Board should grant an increase to the 10% award in recognition of loss of function in his cervical spine, and further, that Mr. G be entitled to a permanent disability award in recognition of his frozen left shoulder.

I reviewed Mr. Alexander's response dated June 19, 1985. Bearing in mind that I was addressing myself at that time solely to the issue of entitlement to a pension in recognition of the frozen left shoulder, it was my understanding that the Board's position with respect to this issue might be summarized as follows:

(1) Mr. G was consciously restricting and resisting movement of the left shoulder.

(2) Mr. G was suffering from conversion hysteria; the predominant cause of continuing disability was primarily considered to be psychogenic rather than on the basis of any pathology.

I carefully considered Mr. Alexander's remarks and the findings of the Appeal Board and disagreed.

I observed that many of the doctors who had assessed and treated Mr. G, including those who supported the view that he suffers from a frozen left shoulder, had noted the existence of psychogenic symptomology. However, I did not believe that the existence of psychogenic symptoms and an organic disability were necessarily mutually exclusive. This appeared to be borne out in this case by those reports which report on both aspects of Mr. G's disability. I was of the opinion that the Board ought not to use the existence of psychogenic symptomology as grounds for denying entitlement to a permanent pension in recognition of his frozen left shoulder, in the presence of significant organic findings. It should be noted that I made this observation in the context of the majority viewpoint of outside consultants and at least some Board medical personnel that Mr. G suffers from a frozen left shoulder.

Further, while the Board had not accepted entitlement for a non-organic disability, I noted Dr. P's October 9, 1979 report which states in part:

> I think the accident of Jan./79 is a very mild factor in his psychiatric disability.

Therefore, even if the frozen shoulder was wholly attributable to non-organic factors, which was apparently not the case as noted above, there were grounds for accepting this, even on the basis of Mr. G's non-organic disability.

It was my opinion that the Appeal Board in its decision dated October 3, 1983 was unreasonable to refuse to recognize the frozen left shoulder resulting from the work accident of January 11, 1979. [Reference: *Ombudsman Act*, section 22(1)(b)]

It was my recommendation that the Appeal Board should revoke its decision and assess Mr. G for a permanent disability award in recognition of his frozen left shoulder. [Reference: *Ombudsman Act*, section 22(3)(g)] The adequacy of the 10% award as it pertains to the loss of function of Mr. G's cervical spine, as noted above, is still under investigation, and my views on this matter will follow.

This recommendation was included in a report to the Chairman dated October 7, 1985.

The Board had not formally responded to the report and recommendations by March 27, 1986. I therefore determined that a reasonable length of time had passed without appropriate action on the Board's part and reported the matter to the Premier. The worker was advised of the results of the investigation and the file was closed.

ONTARIO OMBUDSMAN STAFF

TO MARCH 1986

AITKEN, Janet
ALLAN, John
ARKELL, Tim
AYLIFFE, Linda
BAILIE, Sam
BERNIER, Suzanne
BIDELL, Joan
BITTIRA, Gangu
BOOTHBY, Paula
BOURNS, Maureen
BRIDGER, Lynne
BROOKWELL, Larry
BUBRIN, Vladimir
BURROWS, Patricia
BYLSMA, Klaas
CAP, Wanda
CARLINO, Gerry
CARTEN, Jennifer
CHAMBERS, Sharon
CHIASSON, Lucille
CHIC, Jacquie
CONROY, Nadene
COOLMAN, Joyce
CROSSLEY, Barbara
DEPOCAS, Elise
DESBIENS, Pauline
DUNNILL, Michael
ELDRIDGE, Carole
ESTORBA, Josie
EVANS, Cathy
FELDMAN, Cara
FENTON, Mary Jane
GABRIEL, Liz
GERHARD, Perry
GIULIANI, Gary
GLICKMAN, Sheldon
GRAY, Virginia
GRIFFIN, Dianne
HARRISON, Joan
HASLAM, Susie
HAYASHI, Michael
HEAD, Sylvia
HILL, Dr. Daniel G.
HIRST, Barbara
HOBSON, Jim
HOFFMAN, Judith
HOLMES, Jackie
HOLMES, Sterling
IAHTAIL, Mary Lou
JAMIESON, Marion
JOHNSON, Gini
JONES, Christine
JOYAL, Janet
KAGAN, Kenneth
KATAMAY, Olga
KEIL, Martha
KERSHAW, Janet
KING, Dianne
KNUDSON, Inez
KUTA, Liz
LAMPKIN, Lorna
LANGELIER, Pierre
LA ROSA, George
LATINCIC, Mary Ann
LEE, Allan
LEGARDO, Lourdes
LEWIS, Cathy
LOGAN, Rosemary
LUCAS, Lourine
LYNCH, Gwen
MACDONALD, Andrew
MACEROLLO, Bob
MACKEY, David
MACNEE, Katie
MARKIEWICZ, Eva
MARTIN, Christine
MAY, Laurel
MCCOLLIN, Phyllis
MCKAY, Catherine
MCKINNON, Clarine
MCLEOD, Maret
MCNAMARA, Cecilia
MCPHEE, Sherrie
MENNIE, Florence
MESLIN, Eleanor
MILLS, Allan
MOODY, Eric
MORRISH, Ginette
MORRISON, Gail
MORTON, Margret
MURRAY, Dolly
NAISH, Doug
NOCK, June
O'BRIEN, David
ORLOWSKI, Diane
ORTVED, Janet
PANJWANI, Mohammed
PELLETIER, Allan
REID, David
ROBERT, D'Arcy
ROBSON, Donna
RODGERS, Faye
ROMAN, Josie
ROWE, Robin
RYAN, Lee
SAVAGE, Harvey
SCHARBACH, Stephen
SCHULZ, Wolfgang
SEALEY, Carol
SEMENCIW, Joe
SHULTIS, Tracy
SIMPKINS, Jan

SIMONS, Craig
SKENE, Tom
SORA, David
SOUCIE, Claude
SOUSA, Maria
STEADMAN, Dorothy
STUART, Gerald
TAMAYA, Fern
TAMBURANO, Shirley
THEN, Milan
THOMAS, Fred
THOMS, Joanne
TORRANCE, William
TROTT, William
VAN KLEEF, Joy
VIRC, Elizabeth
WALCOTT, Margaret
WHEELER-MCSWEENEY, Karen
WORKU, Habte
YOUNG, Pamela
ZACKS, Michael

LANGUAGE FACILITIES

The staff of the Ombudsman's Office is multilingual. We can communicate in 28 languages.

Amharic
Cree
Croatian
Czech
Dutch
Estonian
English
Filipino
French
German
Gujerati
Hebrew
Hindi
Hungarian
Italian
Kannada
Macedonian
Oji-Cree
Polish
Portuguese
Russian
Serbian
Slovak
Slovenian
Spanish
Ukranian
Urdu
Yiddish

ONTARIO OMBUDSMAN OFFICES

KENORA
223 First Street South
Kenora, P9N 1C2
Tel: (807) 468-3091

NORTH BAY
340 McIntyre Street West
North Bay, P1B 2Z1
Tel: (705) 476-5800

OTTAWA
#702, 151 Slater Street
Ottawa, K1P 5H3
Tel: (613) 345-9235

THUNDER BAY
213 Red River Road
Thunder Bay, P7B 1A5
Tel: (807) 345-9235

TIMMINS
81 Balsam Street South
Timmins, P4N 2C9
Tel: (705) 268-2161

TORONTO
125 Queen's Park
Toronto, M5S 2C7
Tel: (416) 586-3300

WINDSOR FIELD OFFICE
P.O. Box 3275
Tecumseh Postal Station "P"
Tecumseh, N8V 2M4
Tel: (519) 974-6166

LONDON FIELD OFFICE
P.O. Box 1019
Station "B"
London, N6A 5K1
Tel: (519) 432-1117

MEMBERS OF THE STANDING COMMITTEE ON THE OMBUDSMAN

Mr. R. K. McNeil, Chairman	Elgin
Mr. N. H. Sheppard, Vice Chairman	Northumberland
Mr. M. L. Bossy	Chatham-Kent
Mr. P. Hayes	Essex North
Dr. D. J. Henderson	Humber
Mr. M. Hennessy	Fort William
Mr. A. K. McLean	Simcoe East
Mr. G. E. Morin	Carleton East
Mr. B. Newman	Windsor-Walkerville
Mr. E. T. Philip	Etobicoke
Mr. Y. R. Shymko	High Park-Swansea

CLERK: Mr. T. Decker

STAFF:
Mr. J. Bell, Counsel

Ms. M. Madisso, Research Officer, Legislative Research Services

APPENDIX A

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS			
12	1	1. That the Ministry reopen its file and take whatever steps are necessary to review the HUDAC and related inspection reports for those houses owned by persons who originally filed a deficiency list and who are still interested in some form of assistance from the Ministry. (It shall be the Homeowners Association's responsibility to advise the Ministry of the names of these persons.); that following this review the Ministry, at no cost to the homeowners, repair those homes which suffered damage as a result of a major structural defect relating to original construction or in which there exist substantial defects relating to original construction as reflected in the HUDAC inspection reports; that upon proof of payment of repair costs, the Ministry compensate any of the above-noted homeowners who have repaired damage to their homes caused by major structural defects relating to	13, Rec. 6 ["7"]	1.(a) That the Ministry reopen its file on the matter and take whatever steps are necessary to review the HUDAC and related inspection reports for those houses which are owned by persons who originally filed a deficiency list and who are still interested in some form of assistance from the Ministry. (It shall be the Homeowners Association's responsibility to advise the Ministry of the names of these persons.) (b) Following this review, the Ministry, at no cost to the homeowners, pay or cause payment to be made for the repair of those homes which have suffered damage as a result of a major structural defect relating to original construction or in which there exist substantial defects relating to original construction as reflected in the HUDAC inspection reports. (c) If any of the above-noted homeowners have repaired damage caused by major structural defects relating to original construction, or any substantial defects relating to	On April 25, 1986, our Office wrote the Deputy Minister advising her of the Committee's recommendations, and requesting that she advise our Office as to the Ministry's plans for the implementation of the recommendations.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS (cont'd)			
		original construction, or any substantial defects relating to original construction, as reflected in the HUDAC inspection reports; that the Ministry send reporting letters to the above-noted homeowners indicating the matters about which the homeowners complained as well as the corrective work intended. 2. The Ministry should send reporting letters to those homeowners who are still interested (as indicated to the Ministry by the Homeowners Association), and original deficiency lists. The letter should indicate the matters about which the homeowners complained as well as the corrective work intended.		original construction, as reflected in the HUDAC reports, then these homeowners should be compensated for their actual repair costs. In the Committee's opinion, the Ministry should seek contribution and/or indemnity from HUDAC for the cost of these repairs. The Committee has concluded that HUDAC's actions have in some measure caused or contributed to the Ministry's predicament and to the statements made by the Minister wherein he made commitments to the homeowners.	
		MINISTRY OF THE ENVIRONMENT			
11	10	That the Minister cancel his decision to accept the adjudicator's recommendation not to	12, Rec. 2	That the Minister of the Environment accept in principle that the Crown may, in the appropriate circumstances,	The Ministry has advised that an independent adjudicator will be asked to assess whether or not

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF THE ENVIRONMENT (cont'd)			
		pay the complainant's claim for interest; that the Minister accept and consider the claim as one properly made under the Public Works Creditors Payment Act.		pay a claimant interest due pursuant to a term of a contract with a contractor; that the Minister consider the merits of the complainant's claim for interest owing on the principal amount in question and formulate a decision whether or not to pay the claim.	interest is due, and the Ministry will abide by that assessment.
		MINISTRY OF GOVERNMENT SERVICES			
2	60	That the Ministry pay the complainant the sum of $1,318.00 for his losses and legal expenses.	3, Rec. 34	That the Audit Act and the Financial Administration Act be amended to provide that when such a recommendation is made by the Ombudsman after all necessary and appropriate requirements of the Ombudsman Act have been adhered to by his Office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. Further, that the Ombudsman's Office and the Ministry of Government Services resume their discussions on the merits of the Ombudsman's recommendation and that the results of these discussions are to be reported to the Standing Committee.	The Ministry of Treasury and Economics has responded and proposed that the Ombudsman Act is the more appropriate statute for the amendment, since the purpose of the amendment directly relates to procedure under that Act. The Ministry proposed that the Ombudsman Act be amended as follows: "Where the Ombudsman, in a report under subsection 22(3), recommends to the governmental organization to whom the report is made that the governmental organization pay a specified sum to or for the benefit of the complainant to reimburse the complainant for an ascertainable financial loss suffered by him in the matter complained of, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at
			11, Rec. 4	That the Ombudsman Act be amended as follows: "Where the Ombudsman, in a	

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF GOVERNMENT SERVICES (cont'd)			
				report under subsection 22(3), recommends to the governmental organization to whom the report is made that the governmental organization pay a specified sum to or for the benefit of the complainant to compensate the complainant for an ascertainable financial loss suffered by him, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from this section, for the payment of the sum so agreed on, such sum shall, where it is less than $1,000 and has been ascertained as required by this section, be paid by the Treasurer out of the Consolidated Revenue Fund on the authorization of the Minister concerned, and where the sum so agreed on is $1,000 or more, it shall be paid by the Treasurer out of the Consolidated Revenue Fund on the order of the Lieutenant Governor in Council approving such payment as is recommended by the Minister concerned."	the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from this section, for the payment of the sum so agreed on, such sum may, where it is less than $1,000, be paid by the Treasurer out of the Consolidated Revenue Fund on the authorization of the Minister concerned, and where the sum so agreed on is $1,000 or more, it may be paid by the Treasurer out of the Consolidated Revenue Fund on the order of the Lieutenant Governor in Council approving such payment as is recommended by the Minister concerned." The amendment will be included in the package of amendments to the Ombudsman Act.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF GOVERNMENT SERVICES (cont'd)			
			12, p. 16	The Committee noted that the Attorney General has stated that recommendations for these amendments to the Act would be placed before Cabinet. The Committee expects to be dealing with them in the near future.	
			13, p. 8	The Committee recommends that the Attorney-General table immediately in the Legislature a bill amending the Ombudsman Act.	To date, no Bill has been tabled.
		MINISTRY OF HEALTH			
Special Report Mr. F	1	That the Ministry of Health: (a) improve its methodology and data base for the routine assessment of outpatient physiotherapy service adequacy; establish procedures for continuing needs review; and develop an appropriate evaluation and feedback mechanism to assess outpatient physiotherapy needs. (b) immediately grant permission to Mr. F to purchase and transfer to his Belleville facility the privileges attached to facility licence number 34, part I, schedule 9, of Regulation 452 under the Health Insurance Act.	14, Rec. 1	That the Ministry of Health immediately grant permission to Mr. F to purchase and transfer to his Belleville facility the privileges attached to facility licence number 34, part I, schedule 9, of Regulation 452 under the Health Insurance Act.	The Ministry has been informed of the Committee's recommendation and our Office is presently awaiting the Ministry's response.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR			
		Workers' Compensation Board			
12	9	That the Appeal Board revoke its decision and grant the late complainant entitlement for his liver disease as being causally related to his employment with the accident employer.	13, Rec. 7	That the Appeal Board revoke its decision dated December 10, 1982 and grant the complainant entitlement for his liver disease as being causally related to his employment with the accident employer.	
12	14	That the Appeal Board revoke its decision dated December 17, 1982 and grant the complainant entitlement to compensation benefits on the basis of an aggravation of pre-existing degenerative disc disease arising out of and in the course of his employment.	13, Rec. 8	That the Appeal Board revoke its decision dated December 17, 1982 and grant the complainant entitlement to compensation benefits on the basis of an aggravation of pre-existing degenerative disc disease arising out of and in the course of his employment.	On January 29, 1986, Dr. Robert Elgie, Chairman of the Board, wrote Dr. Hill that the Board had accepted the Committee's recommendation and had directed the complainant's file to the Claims Services Division for appropriate administrative action.
		MINISTRY OF NORTHERN AFFAIRS AND MINES			
		Ontario Northland Transportation Commission			
Special Report Mr. R	2	That the Pension Board allow Mr. R to make contributions for the period from six months after his initial date of employment in May 1957.	14, Rec. 2	That the Pension Board of the O.N.T.C. allow Mr. R to make constributions for the period from six months after his initial date of employment in May of 1957. The Committee intends that the period of this contribution will be 18 months ending April, 1959.	Our Office has been informed that the O.N.T.C. is preparing an Order-in-Council to implement the Committee's recommendation.

APPENDIX B

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF EDUCATION					
2	47	That a more comprehensive insurance policy be made available to students, one which would provide compensation for injuries resulting in the loss of future earning power.	May 4, 1977	The Deputy Minister took steps to meet with insurance industry representatives regarding more comprehensive insurance for students.	3, Rec. 23	That the Ministry forthwith pursue its discussions with the insurance industry and other interested parties for the purpose of developing an appropriate contract of insurance in the indemnity type at a realistic premium which would adequately compensate a pupil for injuries sustained in the case of a pure accident as the result of participation in shop classes and in organized athletic activities.	The Ministry has amended s. 8(1)(i) of the Education Act as follows: "The Minister may (i) prescribe the conditions under which and the term upon which pupils of boards shall be deemed t be employees under the Workers' Compensation Act, deem pupils to be employees for such purpose and require a board to reimburse Ontario for payments made by Ontario under that Act in respec of a pupil of the board deemed to be an employee of Ontario by the Minister."
					11, Rec. 3	That recommendation 23 of its Third Report be implemented by the Ministry of Education by means of a policy of insurance on a province-wide basis before the end of 1984.	
					12, p. 9	The Committee urged the Ministry to move quickly and said it expected the recommendation to be	

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF EDUCATION (cont'd)					
						implemented before its next hearings.	
					13, Rec. 6	That the Ministry prepare an insurance program related to the injuries sustained in sports and/or shop activities by students in elementary and secondary schools which result in loss of future earnings, and that the Ministry report to the Committee.	At the end of November, 1985, the Ministry struc a committee of four representing different aspects of the question. The committee is obtaini advice from an insurance consultant and a positio paper will be prepared o the whole issue once the consultant's report is available.
		MINISTRY OF HEALTH					
3	40	That: 3) The Nursing Homes Act, 1972, be amended in order that provision be made for the successful candidate for the construction of a new home to make application for a conditional licence immediately upon the making of the award to him. This licence should be conditional	May 4, 1977	Agreed to implement recommendation.	5, p. 32	The Committee considered this complaint for the purpose of following up with the Ministry as to the implementation of the Ombudsman's recommendation as set out at pages 177 and 178 of the Ombudsman's Third Report.	Necessary amendments have yet to be enacted. The Ministry proposed an interim arrangement whereby on any call for proposals the Ministry will undertake to the successful proposer that he be awarded a licence provided he constructs and establishes the home in accordance with the Nursing Home Act and
					11, p. 21	The Committee accepted the interim arrangement	

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH (cont'd)					
		on compliance with the terms of the proposal and any subsequent stipulations imposed by the Ministry prior to the granting of an unconditional licence.				on the understanding that the Act will be amended at some time in the future.	regulations. This interim arrangement was acceptable to the Ombudsman.
					12, p. 15	The Committee noted that it is still awaiting amendments to the legislation and will continue to monitor the Ministry's response to its recommendation.	
					13, p. 12	The Committee noted that the interim arrangement accepted by the Committee pending amendment of the Nursing Home Act continues to be followed by the Ministry and will be followed until the legislation is amended. The Committee expressed hope that the amendments will be brought forward soon.	The Ministry has advised that amendments are presently being drafted.